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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-210]

Green Corn; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Green Corn by establishing a new title and two new grades to accommodate small, consumer size packages, as well as revising and updating the amount of mechanical damage, and revising and adding definitions and changing the format in order to bring the standard into conformity with current harvesting and marketing practices. The Florida Sweet Corn Exchange and the Zellwood Sweet Corn Exchange, which represent the majority of sweet corn growers in Florida, has requested the United States Department of Agriculture (USDA) make the changes to bring them into conformity with current cultural, harvesting and marketing practices. The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: February 12, 1992.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of the U.S. Standards for Grades of Green Corn will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The proposed rule, United States Standards for Grades of Green Corn, was published in the **Federal Register** on April 5, 1991, (56 FR 14027-14030). USDA received a request, from a grower/packer organization of sweet corn, to extend the comment period to provide more time for interested persons to analyze the proposed rule and prepare comments. The reopening and extension of the comment period on the proposed rule was published in the **Federal Register** on May 28, 1991, (56 FR 24033).

The Florida Sweet Corn Exchange and the Zellwood Sweet Corn Exchange, (the Exchanges), which represent the majority of sweet corn growers in Florida, formally requested USDA to revise the United States Standards for Grades of Green Corn that were last revised in May 1954. The Exchanges requested that the standards be revised in order to bring them into conformity with current cultural, harvesting, and marketing practices. They contend that due to changes in harvesting practices (more growers using mechanical harvesters versus hand picking) and new improved varieties, that changes are necessary. In addition, new marketing and packaging techniques have resulted in small, consumer size packages of corn. Under the present grade requirements the consumer packaged corn cannot meet any U.S. grade due to requirements as to covering, clipping and trimming. Also, packages of this type will not meet Canadian import requirements, which requires a minimum of a U.S. No. 1 grade for corn entering Canada.

The comment period ended June 27, 1991, and a total of thirty-three comments were received.

Thirteen comments were in favor of the proposal in its entirety. Eleven of these were from the U.S. sweet corn industry, one was from a State Department of Agriculture, and one from an Agricultural Marketing Service (AMS) Federal Supervisor. These comments agreed that due to changes in current cultural, harvesting, and marketing practices of sweet corn, it was necessary to change the standards as proposed.

Twenty comments were in favor of the proposed revisions with some changes. These comments were from growers, shippers, brokers, repackers, wholesalers, researchers, and AMS Federal Supervisors.

Six comments were opposed to the proposal to score the presence of worms as a defect in the U.S. No. 1 grade. The current standard does not specifically score the presence of worms in the U.S. No. 1 grade, but does limit the amount of damage that may be caused by worms. These comments expressed concern that the proposed requirement would lead to increased use of pesticides, and recommended that this requirement remain as it is in the current standard. The thrust of these comments was reflected in University studies that were referred to the Agency by the Agricultural Research Service. The studies stated that "the primary effect of pesticide use in connection with cosmetic appearance would be to control various insect pests such as fall armyworm and corn earworm." Based on these comments and all other available information, the Agency has concluded that the requirement as to worms in the U.S. No. 1 grade should remain as it is in the current standard.

Several comments included recommendations to either increase the cob length in the U.S. No. 1 Husked grade from the proposed 4 inches to 5 inches, or increase the cob length in the U.S. No. 2 grade from the proposed 4 inches. However, they did not specify a recommended length for the U.S. No. 2 grade. The contention was that the market would be better served if 4 inch ears were not included in the standard. Also, since the U.S. No. 1 grade has a minimum cob length of not less than 5 inches, unless otherwise specified, they thought the U.S. No. 1 Husked should

have the same requirements. AMS believes that the "unless otherwise specified" clause in the proposed standard will satisfy the needs of those who wish to specify a longer cob length, but still have the shorter minimum (4 inch cob length) for the majority who like the cob lengths as proposed.

Five comments opposed the proposed definitions of "well trimmed" and "fairly well trimmed," most notably the definition pertaining to shank length. They contend that reducing the shank length from 6 inches to 3 inches as proposed would have no positive impact on consumers; the cob would be the same regardless of the shank length. Also, they note that some varieties and growing areas naturally produce corn with shanks longer than 3 inches. AMS agrees that the definitions of "well trimmed" and "fairly well trimmed" should remain as they are defined in the current standard with a shank length of not more than 6 inches.

Two of the twenty comments addressed the "Reqirement as to count" section. One of these recommended that packages which contain from 1 to 10 ears be allowed a variation in the number of ears permitted in individual packages. As the Agency proposed, when packed 1 to 10 ears per package no variations in the number of ears in an individual package would be permitted. However, the second comments suggested there should be no variation in the number or ears permitted in individual packages that contain from 1 to 25 ears per package. AMS decided to leave the "Requirement as to count" section as proposed since these comments were contradictory and no other comments were received on the subject. If variations in the number of ears in packages which contain from 1 to 10 ears were allowed, everyone in the marketing chain would be subject to contract disputes when ordering small consumer packages with a specific number of ears only to find a variation in that number. Additionally, allowing this variation may be misleading to consumers.

One of the twenty comments suggested increasing the requirement of filling in the U.S. Fancy grade from "fairly well filled" to "well filled." Stating that with advances in breeding, growers and consumers expect that the U.S. Fancy grade, the "top" grade, would provide for the cobs to be filled to the tip. AMS believes, however, based on the Agency's experience with sweet corn production in various areas, that this requirement may be too difficult to meet. For this reason we decided to leave the filling requirement as it is currently, fairly well filled.

Three of the twenty comments were in favor of the proposal, but suggested clarifications were needed in several definitions. Specifically, there was uncertainty about whether both "well clipped" and "properly clipped" allowed one or both ends of the cob to be clipped, and if "husked" meant that the entire length of the cob had to have approximately 3 to 4 rows of kernels visible. It was also suggested that the standards define "specimen," "individual package," and "package." AMS agrees that the definitions of "well clipped" and "properly clipped" needed some clarification; this final rule defines "well clipped" as having one or both ends removed and "properly clipped" as having only the tip end removed. The definition for husked has also been revised. The new definition takes into account that kernels do not grow in perfectly straight rows, but may grow slightly curved around the cob. The definition was revised to read "Husked means that on the full length of the cob the equivalent of a least 3 rows of kernels are exposed up to the entire cob." "Specimen," "individual package," and "package" were, however, not added to the definitions as suggested. AMS feels that the term specimen is self explanatory and, since packaging periodically changes, it would be more appropriate to include such information in the inspection instruction handbooks.

One of the twenty comments suggested several changes to the proposed rule including: not allowing clipping in the U.S. No. 1 grade; requiring the U.S. No. 1 Husked grade have a minimum cob length of 5 inches rather than 4 inches; eliminating the container tolerance for serious defects in packages of 5 specimens or less; and changing portions of the classification of defects chart which provides for the number of defective kernels allowed on a specific cob length. AMS did not incorporate these changes because they would not further the purposes of the grade standard and because, other than the minimum cob length, no other commentor suggested these changes.

Six of the twenty comments "would like to see the grade standards for 'Husked Corn' approved. However, they were opposed to the other changes in the Green Corn standards." AMS concluded that since most of the changes to the standard are due to incorporating the "husked corn" grades, this final rule will enhance the marketing of sweet corn.

AMS develops and improves standards of quality, condition, grade, and packaging in order to encourage uniformity and consistency in commercial practices. The provisions of this final rule are the same as those in the proposed rule, except for the changes noted above in response to the comments received and except for several minor changes made for clarity. In addition, a metric conversion table and metric equivalents are added to this final rule as appropriate.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. Subpart—United States Standards for Green Corn (currently consisting of §§ 51.835 through 51.857) is revised to read as follows:

Subpart—United States Standards for Grades of Sweet Corn

Grades

Sec.

Tolerances

Count

Application of Tollerances

Definitions

Classification of Defects

Metric Conversion Table

Subpart—United States Standards for Grades of Sweet Corn

Grades

§ 51.835 U.S. Fancy.

"U.S. Fancy" consists of ears of sweet corn which meet the following requirements:

(a) Basic Requirements:

(1) Similar varietal characteristics;

(2) Well trimmed; and,
(3) Well developed.
(b) Free From:
(1) Smut;
(2) Worms;
(3) Insect or worm injury; and,
(4) Decay.
(c) Free From Injury Caused By:
(1) Rust;
(2) Discoloration;
(3) Birds;
(4) Mechanical;
(5) Disease; and,
(6) Other means. (See § 51.843)
(d) Cobs shall be fairly well filled with plump and milky kernels and well covered with fresh husks.
(e) Ears shall not be clipped.
(f) The length of each cob shall be not less than 6 inches (152.4 mm).
(g) For tolerances see § 51.840.

§ 51.836 U.S. Fancy, Husked.

"U.S. Fancy, Husked" consists of husked ears of sweet corn which meet the requirements of the U.S. Fancy grade except those pertaining to amount of covering, trimming, clipping and length of cob. Sweet corn of this grade shall be:
(a) Husked (any remaining husk must be fresh).
(b) Properly trimmed.
(c) Each ear may be clipped but each clipped ear must be well clipped.
(d) The length of each cob clipped or unclipped, shall be not less than 5 inches (127.0 mm), unless otherwise specified.
(e) For tolerances see § 51.840.

§ 51.837 U.S. No. 1.

"U.S. No. 1" consists of ears of sweet corn which meet the following requirements:
(a) Basic Requirements:
(1) Similar varietal characteristics;
(2) Well trimmed; and,
(3) Well developed.
(b) Free From:
(1) Smut; and,
(2) Decay.
(c) Free From Injury Caused By:
(1) Rust.
(d) Free From Damage Caused By:
(1) Discoloration;
(2) Birds;
(3) Worms;
(4) Other insects;
(5) Disease;
(6) Mechanical; and,
(7) Other means. (See § 51.843)
(e) Cobs shall be fairly well filled with plump and milky kernels and fairly well covered with fresh husks.
(f) Each ear may be clipped, but each clipped ear shall be properly clipped.
(g) The length of each cob, clipped or unclipped, shall be not less than 5 inches (127.0 mm), unless otherwise specified.
(h) For tolerances see § 51.840.

§ 51.838 U.S. No. 1, Husked.

"U.S. No. 1, Husked" consists of husked ears of sweet corn which meet the requirements of the U.S. No. 1 grade except those pertaining to amount of covering, trimming, clipping and length of cob. Sweet Corn of this grade shall be:
(a) Husked (any remaining husk must be fresh).
(b) Properly trimmed.
(c) Each ear may be clipped but each clipped ear must be well clipped.
(d) The length of each cob clipped or unclipped, shall be not less than 4 inches (101.6 mm), unless otherwise specified.
(e) For tolerances see § 51.840.

§ 51.839 U.S. No. 2.

"U.S. No. 2" consists of ears of sweet corn which meet the following requirements:
(a) Basic Requirements:
(1) Similar varietal characteristics;
(2) Fairly well trimmed; and,
(3) Fairly well developed.
(b) Free From:
(1) Smut; and,
(2) Decay.
(c) Free From Serious Damage Caused By:
(1) Birds;
(2) Worms;
(3) Other insects;
(4) Disease;
(5) Mechanical; and,
(6) Other means. (See § 51.843)
(d) Cobs shall be at least moderately filled with plump and milky kernels and fairly well covered with fresh husks.
(e) Each ear may be clipped, but each clipped ear shall be properly clipped.
(f) The length of each cob, clipped or unclipped, shall be not less than 4 inches (101.6 mm), unless otherwise specified.
(g) For tolerances see § 51.840.

Tolerances

§ 51.840 Tolerances.

In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified:
(a) *For defects.* 10 percent in any lot for ears of corn which fail to met the requirements of the grade, including therein not more than 2 percent for decay.
(b) *For off-size.* 5 percent in any lot for ears of corn which fail to meet the requirements as to length of cob.

Count

§ 51.841 Requirement as to count.

The number of ears of corn in any package may be specified by count or in terms of dozens or half dozens. Variation from the number specified shall be permitted as follows: *Provided,* That the average for the lot is not less than the number specified nor more than two ears greater than the number specified:

Specified number per package:	Variation permited in individual packages:
1-10 ears	0.
11-25 ears	2 ears under count, 2 ears over count.
26-60 ears	3 ears under count, 5 ears over count.
More than 60 ears	4 ears under count, 6 ears over count.

Application of Tolerances

§ 51.842 Application of tolerances.

The contents of individuals packages in the lot, based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerance specified:
(a) For packages which contain 10 specimens or more and a tolerance of 10 percent or more is provided, individual packages in any lot may contain not more than one and one-half times the tolerance specified. For packages which contain 10 specimens or more and a tolerance of less than 10 percent is provided, individual packages may contain not more than double the tolerance specified except that at least one defective and one off-size specimen may be permitted in any package; and,
(b) For packages which contain less than 10 specimens, individual packages in any lot may contain not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package: *Provided,* That for packages which contain 5 specimens or less, individual packages in any lot are not restricted as to the percentage of defects: And *Provided Further,* That not more than one specimen which is affected by decay or otherwise seriously damaged and one off-size specimen may be permitted in any package.

Definitions

§ 51.843 Definitions.

(a) *Similar varietal characteristics* means that the ears in any package have similar kernel color and character of growth. Ears of field corn and sweet corn, or ears having white color kernels, yellow color kernels and mixed color kernels of corn, shall not be mixed.
(b) *Well trimmed* means that the ears are practically free from loose husks and

that the shank shall be not more than 6 inches (152.4 mm) in length and not extend more than one inch (25.4 mm) beyond the point of attachment of the outside husk.

(c) *Well developed* means that the ears are fairly straight and are not stunted. Nubbins are not well developed ears.

(d) *Insect or worm injury* means that insect or worm frass is present, or there is visible evidence of insect or worm injury.

(e) *Injury* means any defect listed in § 51.844 or any defect which more than slightly affects the appearance, or the edible or shipping quality of the ear. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:

(1) Rust when the aggregate area on the husk exceeds one square inch (64.5 mm^2), or when the rust extends deeper than 2 layers of husks; and

(2) Discoloration caused by frost or sprayburn, or similar types of discoloration when affecting an aggregate area of more than 3 square inches (193.5 mm^2) on the husk, or when exceeding an aggregate area of 25 percent of the surface of all blades.

(f) *Fairly well filled* means that the rows of kernels show fairly uniform development, and that the appearance and quality of the edible portion of the ear are not materially affected by poorly developed rows. When the ear has not been clipped, not more than one-fourth of the length of the cob may have poorly developed or missing kernels at the tip. When the ear has been clipped, it shall have practically no poorly developed kernels at the tip of the cob. Missing or poorly developed kernels on other parts of the ear shall not aggregate more than one square inch (64.5 mm^2) on a cob 6 inches (152.4 mm) in length, and a proportionally greater area shall be permitted on a longer cob and a proportionally lesser area on a shorter cob.

(g) *Plump and milky* means that the kernels are well developed and the contents have a milky, creamy, or clear jelly-like consistency.

(h) *Well covered* means that the husk enclosing the ear is tight and undisturbed, except that a slight opening may have been made at the tip: *Provided,* That the disturbed part has been properly replaced so that the appearance of the ear is not more than slightly affected.

(i) *Fresh* means that the husks have fairly good green color and are not badly wilted.

(j) *Husked* means that on the full length of the cob the equivalent of at least 3 rows of kernels are exposed up to the entire cob.

(k) *Well clipped* means that one or both ends of the cob, or one or both ends of the cob and husk have been neatly removed approximately at a right angle to the longitudinal axis.

(l) *Properly trimmed* means that the ear is not damged by loose husks and silks and that the shank shall not extend more than 1 inch (25.4 mm) from the cob, when present.

(m) *Damage* means any defect listed in § 51.844 or any defect which materially affects the appearance, or the edible or shipping quality of the ear. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(1) Discoloration caused by frost or sprayburn, or similar types of discoloration when affecting an aggregate area of more than 5 square inches (322.5 mm^2) on the husk, or when exceeding an aggregate area of 50 percent of the surface of all blades; and,

(2) Worm injury on unclipped ears when extending more than 1½ inches (38.1 mm) from the tip on an ear 6 inches (152.4 mm) in length (proportionately greater or lesser amounts permitted on longer or shorter ears, respectively, or when affecting the kernels on other parts of the ear or any worm injury on clipped ears.

(n) *Fairly well covered* means that the husk enclosing the ear is fairly tight and undisturbed except that an opening may have been made at the tip: *Provided,* That the disturbed part has been properly replaced so that the appearance of the ear is not materially affected.

(o) *Properly clipped* means that the tip end of the cob, or the tip end of the cob and husk have been neatly removed approximately at a right angle to the longitudinal axis.

(p) *Fairly well trimmed* means that the appearance of the individual ear of corn is not seriously affected by loose husks and that the shank shall not be more than 6 inches (152.4 mm) in length and not extend more than 2 inches (50.8 mm) beyond the point of attachment of the outside husk.

(q) *Fairly well developed* means that the ears are not stunted to the extent that the appearance is seriously affected.

(r) *Serious damage* means any defect listed in § 51.844 or any defect which seriously affects the appearance, or the edible or shipping quality of the ear. The following defects or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(1) Worm injury on unclipped ears when extending more than 2 inches (50.8 mm) from the tip on an ear 6 inches (152.4 mm) in length (proportionately greater or lesser amounts permitted on longer or shorter ears, respectively), or when affecting more than 4 kernels on other parts of the cob, or any worm injury on clipped ears extending more than one-fourth inch (3.2 mm) from the tip.

(s) *Moderately filled* means that the rows of kernels show fairly uniform development, and that the appearance and quality of the edible portion of the ear are not seriously affected by poorly developed rows. When the ear has not been clipped, more than one-fourth but less than one-third of the length of the cob has poorly developed or missing kernels at the tip. When the ear has been clipped it shall have not more than a slight amount of poorly developed kernels at the tip of the cob. Missing or poorly developed kernels on other parts of the ear shall not aggregate more than one and one-fourth square inches (80.6 mm^2) on a cob 6 inches (152.4 mm) in length, and proportionally greater area shall be permitted on a longer cob and a proportionally lesser area on a shorter cob.

(t) *Poorly filled* means, on unclipped ears, that the edible quality or appearance is affected to a greater extent than that of an ear 6 inches (152.4 mm) in length which has one-third of the cob at the tip end and aggregate area 1½ inches square (96.8 mm^2) on other portions of the ear with undeveloped kernels or open spaces; and means, on clipped ears, that the edible quality or appearance is affected to a greater extent than that of an ear 6 inches (152.4 mm) in length which has one inch (25.4 mm) at the tip end and an aggregate area 1½ inches square (96.8 mm^2) on other portions of the ear with undeveloped kernels or open spaces.

Classification of Defects

§ 51.844 Classification of defects.

Number of affected kernels allowed for the following defects:

MECHANICAL, BIRD,[1] DISEASE, AND INDENTED KERNELS

Length of cob	Injury	Damage	Serious damage
3 inches (76.2 mm) to 6 inches (152.4 mm)	4	6	8

MECHANICAL, BIRD,[1] DISEASE, AND INDENTED KERNELS—Continued

Length of cob	Injury	Damage	Serious damage
more than 6 inches (152.4 mm) to 10 inches (254.0 mm)...	8	12	16
more than 10 inches (254.0 mm) to 13 inches (330.2 mm)...	12	18	24

[1] In scoring *injury*, if more than the number of kernels allowed above are discolored or punctured or if the husks have been penetrated in more than 1 place; *damage*, if more than the number of kernels allowed above are discolored or punctured or if the husks have been penetrated in more than 2 places; *serious damage*, if more than the number of kernels allowed above are discolored or punctured or if the husks have been penetrated in more than 3 places.

Metric Conversion Table

§ 51.845 Metric conversion table.

Inches	Millimeters (mm)
¼	3.2
1	25.4
1½	38.1
2	50.8
3	76.2
4	101.6
5	127.0
6	152.4
7	177.8
8	203.2
9	228.6
10	254.0
11	279.4
12	304.8
13	330.2

Square inches	Square millimeters (mm^2)
1	64.5
1¼	80.6
1½	96.8
3	193.5
5	322.5

Dated: January 6, 1992.

Daniel D. Haley,

Administrator.

[FR Doc. 92-647 Filed 1-10-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 728]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 10 through January 16, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 728 (7 CFR part 907) is effective for the period from January 10 through January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as large ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990-91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990-91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991-92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990-91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991-92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990-91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990-91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing

the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on January 7, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommend the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The Committee recommended in a vote of 7 members voting in favor, 3 opposing, and 1 abstaining, the issuance of 1,100,000 cartons of general maturity allotment for Districts 1 and 3. In a vote of 9 members voting in favor, 1 opposing, and 1 abstaining, the Committee also recommended the issuance of 53,522 cartons of early maturity allotment for Districts 2 and 4. The marketing information and data provided to the Committee and use in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The total recommended amount of 1,153,522 cartons compares to the 1,300,000 cartons specified in the Committee's shipping schedule. Of the 1,153,522 cartons, 1,100,000 cartons are allotted to Districts 1 and 3 under general maturity. However, the Department, based on its independent analysis, and information provided by the Committee, has revised the recommendation and established volume regulation in the amount of 1,300,000 cartons for Districts 1 and 3. Of the 1,300,000 cartons, 94.82 percent or 1,232,660 cartons are allotted to District 1 and 5.18 percent or 67,340 cartons are allotted to District 3. The additional 53,522 cartons are allotted to Districts 2 and 4 under early maturity, with 37,260 cartons allotted to District 2, and 16,262 cartons allotted to District 4.

During the week ending on January 2, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 838,000 cartons compared with 485,000 cartons shipped during the week ending on January 3, 1991. Export shipments totaled 285,000 cartons compared with 144,000 cartons shipped during the week ending on January 3, 1991. Processing and other uses accounted for 217,000 cartons compared with 531,000 cartons shipped during the week ending on January 3, 1991.

Fresh domestic shipments to date this season total 9,741,000 cartons compared with 13,098,000 cartons shipped by this time last season. Export shipments total 1,464,000 cartons compared with 1,569,000 cartons shipped by this time last season. Processing and other use shipments total 2,069,000 cartons compared with 3,338,000 cartons shipped by this time last season.

For the week ending January 2, 1992, regulated shipments of navel oranges to the fresh domestic market were 797,000 cartons on an adjusted allotment of 1,016,000 cartons which resulted in net undershipments of 219,000 cartons. Regulated shipments for the current week (January 3 through January 9, 1992) are estimated at 940,000 cartons on an adjusted allotment of 955,000 cartons. Thus, undershipments of 15,000 cartons could be carried forward into the week ending on January 16, 1992.

The average f.o.b. shipping point price for the week ending on January 2, 1992, was $9.53 per carton based on a reported sales volume of 800,000 cartons. The season average f.o.b. shipping point price to date is $10.28 per carton. The average f.o.b. shipping point prices for the week ending on January 3, 1991, was $16.30 per carton; the season average f.o.b. shipping point price at this time last year was $9.62.

The Department's Market News Service reported that, as of January 8, demand for first grade sizes 72–88 is fairly light. Demand for first grade 113–163 and choice 72–138 sizes is light, with other sizes moderate. The market is about steady, with choice 32–113 sizes lower, and other sizes about steady. It was also reported that harvesting has been curtailed by rain.

Committee members discussed implementing volume regulation at this time, and different levels of allotment. Committe member comments included statements that inventories remain high and that prices are dropping. Several members expressed concern about the negative impact a larger allotment could have on prices. A member commented that the weak overall economy is having a negative affect on the market. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment for Districts 1 and 3. Only one member opposed the issuance of early maturity allotment for Districts 2 and 4.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 10 through January 16, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of

this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 16, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 8, 1992, and this action needs to be effective for the regulatory week which begins on January 10, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1028 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1028 Navel orange regulation 728.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 10 through January 16, 1992, is established as follows:

(a) District 1: 1,232,660 cartons;
(b) District 2: 37,260 cartons;
(c) District 3: 67,340 cartons;
(d) District 4: 16,262 cartons.

Dated: January 9, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–881 Filed 1–10–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 920

[Docket No. A0–89–A1; FV–90–100]

California Kiwifruit Marketing Order; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order for kiwifruit grown in California. The amendments clarify the way in which grower membership on the Kiwifruit Administrative Committee (committee) is allocated, revise committee tenure requirements, authorize a change in the terms of office which now being August 1, authorize committee nominations to be conducted by mail, and authorize a late payment charge on delinquent handler assessments. These changes were favored by California kiwifruit growers in a referendum held from March 15 to April 5, 1991. The amendments will improve the administration, operation and functioning of the marketing order program.

EFFECTIVE DATE: February 12, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. telephone (202) 720–8139; or Gary D. Olson, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102–B, Fresno, California 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing—Issued December 6, 1989, and published in the **Federal Register** on December 11, 1989 [54 FR 50765]; Recommended Decision and Opportunity to File Written Exceptions—Issued November 23, 1990, and published in the **Federal Register** on November 29, 1990 (55 FR 49532); Secretary's Decision and Referendum Order—Issued February 28, 1991, and published in the **Federal Register** on March 6, 1991 (56 FR 9302).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Fresno, California, on January 19, 1990, to consider the proposed amendment of Marketing Agreement and Order No. 920, regulating the handling of kiwifruit grown in California. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Kiwifruit Administrative Committee (committee) established under the order to assist in local administration of the program.

The proposals pertained to clarifying the way in which grower membership is allocated, reducing the terms of office from 2 years to 1 year for certain committee members, revising committee tenure requirements, authorizing a change in the terms of office which now begin August 1, authorizing committee nominations to be conducted by mail, and authorizing a late payment charge on delinquent handler assessments. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 23, 1990, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 31, 1990. No exceptions were received.

A Secretary's Decision and Referendum Order was issued February 28, 1991, directing that a referendum be conducted during the period March 18–April 5, 1991, among kiwifruit growers in California to determine whether they favored the proposed amendments to

the order. In that referendum, growers voted in favor of five of the six amendment proposals listed on the referendum ballot. The proposal that did not receive the requisite two-thirds vote would have changed from 2 years to 1 year the terms of office for the three additional grower members and alternates to the committee selected from the three districts shipping the greatest volumes of kiwifruit. Accordingly, that proposed amendment is not included in this order amending the order.

The amended marketing agreement was subsequently mailed to all kiwifruit handlers in California for their approval. The marketing agreement was not approved by kiwifruit handlers representing 50 percent or more of the volume of kiwifruit handled by all handlers during the representative period of August 1, 1989, to July 31, 1990.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural growers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having annual receipts of less than $500,000. Small agricultural service firms, which include kiwifruit handlers, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules and regulations issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

The record indicates that there are approximately 100 handlers and 1,200 growers of California kiwifruit. While there is a variance in the size of individual growing and handling operations, the record indicates that the majority of the kiwifruit growers and 30 to 40 percent of kiwifruit handlers would be classified as small businesses under the SBA's definitions.

This final rule amends certain order provisions pertaining to committee member appointments and nominations. Also, authority is added to establish late payment charge on delinquent handler assessments. The record indicates that these changes will improve the administration and operation of the program to the benefit of all kiwifruit growers and handlers.

This final rule clarifies the way in which grower membership on the committee is allocated among the eight established geographic districts. The record indicates that the districts with the highest levels of shipments in the previous fiscal year should be allocated a second grower member position to reflect current procedures, rather than those with the greatest production during that year. The record indicates that the committee currently collects and compiles shipment data by district, which accurately reflect the relative volumes of kiwifruit grown in the various districts. This change will impose no additional costs on growers or handlers, but will merely clarify the way in which the committee currently determines grower member allocation among the districts.

This final rule also revises tenure requirements so that a committee member who has served for six consecutive years on the committee could then serve as an alternate member. The record indicates that this amendment will enable growers who have become knowledgeable of the marketing order and committee operations to continue participating in committee deliberations. Tenure requirements will still apply to voting member positions to promote participation by a larger number of California kiwifruit growers in administering the order. Similarly, the tenure requirement will also apply to alternate positions. No additional costs will be imposed as a result of this change.

Currently, the order provides that nominations for grower members be conducted at grower meetings held in each of the order's eight geographic districts. The record indicates that adding authority to conduct nominations by mail will increase grower participation in the nomination process. This change will also reduce the administrative costs associated with conducting nomination meetings, as well as the costs incurred by individual growers in travelling to and attending the meetings. This change will therefore have a positive impact on both large and small kiwifruit growers and handlers.

Currently, committee members serve terms of office which begin August 1. The record indicates that since complete shipment data may not be available until July or August in some years, the mail nomination process may not be completed prior to August 1. Therefore, the record supports adding authority to change the term of office. To the extent that this change will facilitate the nomination process, it will have a positive impact on growers and handlers. No additional costs will be imposed as a result of this change.

Finally, authority is added to the order to provide for the establishment of a late charge on delinquent handler assessments. This will provide handlers with an incentive to make assessment payments in a timely manner. This change will not impose additional costs on those handlers who remit their assessments on time.

Each of the changes set forth in this document is designed to enhance the administration, operation and functioning of the order, and will not have a significant economic impact on the affected small entities.

Further, the changes will have no significant impact on the reporting and recordkeeping requirements imposed on small businesses. The amendment that authorizes mail nominations may result in additional reporting by growers. However, participation will be voluntary, and the record indicates that the cost of completing a ballot will be substantially less than that to attend a nomination meeting. The amendments include authority for mail nominations. There are approximately 1,200 growers who would be affected by mail nominations, if implemented. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to the OMB for approval.

The Recommended Decision included the finding that it was necessary to change § 920.20 of the marketing order to clarify the way in which it is determined which three districts are entitled to two grower members on the committee. The revision, which would state that such determinations be made on the basis of shipment rather than production data, would more accurately describe the basis upon which grower membership of the committee is now determined. This finding was reaffirmed and adopted in the Secretary's Decision. Further, growers voting in the referendum approved this change in the marketing order. However, the Recommended Decision and the Secretary's Decision inadvertently omitted this change in the regulatory text of § 920.20. Given the fact that this

is a clarifying change, that it was supported by previous findings in this proceeding, and that it was approved in the grower referendum, § 920.20 is amended accordingly in this Order Amending the Marketing Order.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

Order Amending the Order Regulating the Handling of Kiwifruit Grown in California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendment to the Marketing Agreement and Order No. 920 (7 CFR Part 920), regulating the handling of kiwifruit grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates the handling of kiwifruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations.

It is hereby determined that:

Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping kiwifruit covered by the said order, as hereby amended) who, during the period August 1, 1989, through July 31, 1990, handled 50 percent or more of the volume of such kiwifruit covered by the said order as hereby amended have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval or produced for market at least two-thirds of the volume of such commodity represented in the referendum, all of such growers during the period August 1, 1989, through July 31, 1990 (which has been deemed to be a representative period), having been engaged within the production area in the production of kiwifruit for fresh market; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of kiwifruit in the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of kiwifruit grown in California shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended as follows:

Except for the previously noted modifications, the provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1990, and published in the Federal Register on November 29, 1990 (55 FR 49532), and in the Secretary's Decision issued on February 28, 1991, and published in the Federal Register on March 6, 1991 (56 FR 9302), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.20 is revised to read as follows:

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate); one member (and alternate) from each of the eight California districts; three additional committee members and their alternates to be selected from the three districts with the three highest volumes of fresh shipments in the prior fiscal period; *Provided*, That no more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers.

3. Section 920.21 is revised to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The term of office of the three additional grower members and their alternates selected from the three districts shipping the highest volumes of kiwifruit in the prior fiscal period shall be for two years. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members.

4. Section 920.22 is revised to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating

nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

5. Section 920.41 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 920.41 Assessments.

(a) * * * If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary upon recommendation of the committee.

* * * * *

Dated: January 6, 1992.

Jo Ann R. Smith,

Assistant Secretary Marketing and Inspection Services.

[FR Doc. 92-648 Filed 1-10-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 101CE, Special Condition 23-ACE-68]

Special Conditions; Beech Model 200, A200 and B200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are being issued to Stevens Aviation for a Supplemental Type Certification (STC) on the Beech Model 200 Series airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of lightning and high intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 12, 1992. Comments must be received on or before February 12, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 101CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 101CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective 30 days after issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 101CE." The postcard will be date stamped and returned to the commenter.

Background

On November 6, 1991, Stevens Aviation, Post Office Box 399, Dayton International Airport, Vandalia, Ohio 45377, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model 200 airplane. The proposed modification incorporates a novel or unusual design feature such as digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Model 200, A200, and B200 Series airplane is as follows: Part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-9; amendment 11; §§ 23.175, 23.143(a), 23.145(d), 23.153, 23.161(c)(3), and 23.173(a) as amended by amendment 23-14; § 23.951(c) and § 23.997(d) as amended by amendment 23-15 (A200CT, B200 Series only); § 23.1545(a) as amended by amendment 23-23; § 23.1325(e) as amended by amendment 23-20 (B200 Series only); § 23.1305(n) as amended by amendment 23-26; special conditions 23-47-CE-5, including amendments 1 and 2, dated January 12, 1979; Part 25 of the FAR, §§ 25.929 and 25.1419 as amended by amendments 25-34, § 25.831(d) as amended by amendment 25-41. SFAR 27, effective February 1, 1974, as amended by amendments 27-2 through 27-4; Part 36, effective December 1, 1969, as amended by amendments 36-1 through amendment 36-10; exemptions, if any; and the special conditions adopted herein.

Discussion

Stevens Aviation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of lightning and HIRF. These features include electronic systems, which are susceptible to the HIRF environment and that were not envisaged by the existing regulations, for this type of airplane.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual

design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

Protection of System From High Intensity Radioted Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient current and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

TABLE I.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KHz	60	60
500–2000	80	80
2–30 MHz	200	200
30–100	33	33
100–200	150	33
200–400	56	33
400–1000	4020	995
1–2 GHz	7850	1750
2–4	6000	1150
4–6	6800	310
6–8	3600	666
8–12	5100	1270
12–18	3500	551
18–40	2400	750

Note: Since 1989, a concerted effort has been under way to review, verify, and validate the HIRF environment. This table represents the current estimate of the HIRF environment. The current values overall are lower than the previous values for the HIRF environment. Additional requirements will continue to be required for the certification of installed critical systems in aircraft approved for operation below 500 feet.

or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Model 200, A200, and B200 Series airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For example, the Piper PA–42 (51 FR 37711, October 24, 1986), the Dornier 228–200 (53 FR 14782, April 26, 1988), and the Cessna Model 525 (56 FR 49396, September 30, 1991). For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice; therefore, special conditions are being issued without substantive changes for this airplane and made effective 30 days after issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Model 200, A200, and B200 Series airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be

designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definitions apply: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-753 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26740; Amdt. No. 1474]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on January 3, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard

Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/MDE, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 5, 1992*

Cresco, IA—Ellen Church Field, NDB RWY 33, Amdt. 2
Marysville, KS—Marysville Muni, NDB RWY 33, Amdt. 3
Ottawa, KS—Ottawa Muni, NDB RWY 35, Amdt. 2
Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, RADAR-1, Amdt. 22, CANCELLED
Westminster, MD—Carroll CNY RG/Jack B Poage FL, VOR RWY 34, Amdt. 3
Rocky Mount, NC—Rocky Mount-Wilson, VOR/DME RWY 22, Orig.
Medina, OH—Medina Muni, NDB RWY 27, Amdt. 7, CANCELLED
Lufkin, TX—Angelina County, VOR/DME RWY 15, Amdt. 2
Lufkin, TX—Angelina County, VOR RWY 33, Amdt. 12
Lufkin, TX—Angelina County, LOC RWY 7, Amdt. 1
Lufkin, TX—Angelina County, NDB RWY 7, Amdt. 1
Lufkin, TX—Angelina County, VOR/DME RNAV RWY 7, Amdt. 2
Lufkin, TX—Angelina County, VOR/DME RNAV RWY 15, Amdt. 3

** * * Effective February 6, 1992*

Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, ILS RWY 36R, Amdt. 1
New Orleans, LA—New Orleans Intl (Moisant Field), VOR or TACAN A, Amdt. 11, CANCELLED
New Orleans, LA—New Orleans Intl (Moisant Field), LOC RWY 10, Orig., CANCELLED
New Orleans, LA—New Orleans Intl (Moisant Field), LOC BC RWY 19, Amdt. 12
New Orleans, LA—New Orleans Intl (Moisant Field), NDB RWY 10, Amdt. 24
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 1, Amdt. 14
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 10, Orig.
New Orleans, LA—New Orleans Intl (Moisant Field), RADAR-1, Amdt. 14

** * * Effective December 30, 1991*

Waco, TX—Waco Regional, NDB RWY 19, Amdt. 17
Waco, TX—Waco Regional, ILS RWY 19, Amdt. 14

** * * Effective December 27, 1991*

Camarillo, CA—Camarillo, VOR RWY 26, Amdt. 2

** * * Effective December 26, 1991*

Bishop, CA—Bishop, VOR-A, Amdt. 6
Bishop, CA—Bishop, VOR/DME-B, Amdt. 3

[FR Doc. 92-748 Filed 1-10-92; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26739; Amdt. No. 1473]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR

part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendent to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on January 3, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME; ISMLS, MLS, MLS/DME; MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
12/18/91	MI	Benton Harbor	Ross Field-Twin Cities	FDC 1/6341	NDB Rwy 27 Amdt 9
12/18/91	MI	Benton Harbor	Ross Field-Twin Cities	FDC 1/6342	ILS Rwy 27 Amdt 6
12/18/91	MI	Escanaba	Delta County	FDC 1/6331	VOR Rwy 27 Amdt 10
12/18/91	MI	Escanaba	Delta County	FDC 1/6332	VOR Rwy 9 Amdt 12
12/18/91	MI	Escanaba	Delta County	FDC 1/6333	LOC /DME BC Rwy 27 Amdt 2
12/18/91	MI	Escanaba	Delta County	FDC 1/6335	VOR Rwy 18 Amdt 6
12/18/91	MI	Manistee	Manistee County-Blacker	FDC 1/6336	VOR Rwy 27 Amdt 9
12/18/91	MI	Manistee	Manistee County-Blacker	FDC 1/6337	VOR Rwy 9 Amdt 9
12/19/91	MI	Escanaba	Delta County	FDC 1/6354	IL/DME Rwy 9 Amdt 3
12/19/91	SC	Laurens	Laurens County	FDC 1/6347	NDB Rwy 7 Amdt 1
12/24/91	AR	Jonesboro	Jonesboro Muni	FDC 1/6412	VOR Rwy 23 Amdt 7
12/24/91	TN	Lawrenceburg	Lawrenceburg Muni	FDC 1/6426	NDB Rwy 16 Amdt 3
12/27/91	AR	Paragould	Kirk Field	FDC 1/6441	VOR Rwy 4 Amdt 2
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6442	NDB Rwy 26 Amdt 7
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6443	VOR Rwy 32 Amdt 13
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6445	LOC BC Rwy 8 Amdt 8
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6446	ILS Rwy 26 Amdt 11
12/30/91	NE	Norfolk	Norfolk/Karl Stefan Memorial	FDC 1/6466	ILS Rwy 1 Amdt 3

NFDC Transmittal Letter Attachment

Jonesboro

Jonesboro Muni
Arkansas
VOR RWY 23 AMDT 7...
Effective: 12/24/91

FDC 1/6412/JBR/ FI/P Jonesboro Muni, Jonesboro, AR. VOR RWY 23 AMDT 7...CHG feeder RTE from ARG to JBR, CRS/DSTC 124/22.7, ALT 2500FT. S-23 MDA/HAT 680/419 ALL CATS. When control zone not in effect, the following applies... "Except for operators with approved weather reporting service, use Eaker AFB, AR ALSTG and increase all MDAS 180FT". This becomes VOR RWY 23 AMDT 7A.

Paragould

Kirk Field

Arkansas
VOR RWY 4 AMDT 2...
Effective: 12/27/91
FDC 1/6441/PGR/ FI/P Kirk Field, Paragould, AR. VOR RWY 4 AMDT 2...CHG feeder RTES ARG/LBR VORTACS to PZX NDB...ALT 2500. This becomes VOR RWY 4 AMDT 2A.

Alexandria

Esler Regional
Louisiana
NDB RWY 26 ADMT 7...
Effective: 12/27/91
FDC 1/6442/ESF/ FI/P Esler Regional, Alexandria, LA. NDB RWY 26 AMDT 7...DLT note...activate MALSR RWY 26–CTAF. This becomes NDB RWY 26 AMDT 7A.

Alexandria

Esler Regional
Louisiana
VOR RWY 32 AMDT 13...
Effective: 12/27/91
FDC 1/6443/ESF/ FI/P Esler Regional, Alexandria, LA. VOR RWY 32 AMDT 13...DLT note...activate MALSR RWY 26–CTAF. This becomes VOR RWY 32 AMDT 13A.

Alexandria

Esler Regional
Louisiana
LOC BC RWY 8 AMDT 8...
Effective: 12/27/91
FDC 1/6445/ESF/ FI/P Esler Regional, Alexandria, LA. LOC BC RWY 8 AMDT 8...ALT MINS NA when CTRL TWR closed. DLT note...activate MALSR RWY 26–CTAF. This becomes LOC BC RWY 8 AMDT 8A.

Alexandria

Esler Regional
Louisiana
ILS RWY 26 AMDT 11...
Effective: 12/27/91
FDC 1/6446/ESF/ FI/P Esler Regional, Alexandria, LA. ILS RWY 26 AMDT 11...ALT MINS NA when CTRL TWR closed. DLT note...activate MALSR RWY 26–CTAF. This becomes ILS RWY 26 AMDT 11A.

Escanaba

Delta County
Michigan
VOR RWY 27 AMDT 10...
Effective: 12/18/91
FDC 1/6331/ESC/ FI/P Delta County, Escanaba, MI. VOR RWY 27 AMDT 10...delete notes, "When control zone...thru...increase MDA's 240 feet.", "Air carrier...thru...for local conditions NA.", "alternate minimums NA...thru...weather reporting service." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This is VOR RWY 27 AMDT 10A.

Escanaba

Delta County
Michigan
VOR RWY 9 AMDT 12...
Effective: 12/18/91
FDC 1/6332/ESC/ FI/P Delta County, Escanaba, MI. VOR RWY 9 AMDT 12...Delete notes, "When control zone...thru...increase MDA's 240 feet.", "alternate minimums NA...thru...approved weather reporting service." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This is VOR RWY 9 AMDT 12A.

Escanaba

Delta County
Michigan
LOC/DME BC RWY 27 AMDT 2...
Effective: 12/18/91
FDC 1/6333/ESC/ FI/P Delta County, Escanaba, MI. LOC/DME BC RWY 27 AMDT 2...delete notes, "when control zone...thru...increase MDA's 240 feet.", "activate MALSR...thru...VASI RWYS 18–36 CTAF.", "alternate minimums NA...thru...approved weather reporting service.", "air carrier landing...thru...for local conditions NA.", "activate MALSR, HIRL...thru...VASI RWYS 18–36 CTAF." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This is LOC/DME BC RWY 27 AMDT 2A.

Escanaba

Delta County
Michigan
VOR RWY 18 AMDT 6...
Effective: 12/18/91
FDC 1/6335/BSC/ FI/P Delta County, Escanaba, MI. VOR RWY 18 AMDT 6...delete notes, "when control zone...thru...increase all MDA's 240 feet.", "air carrier...thru...local conditions NA.", "alternate minimums NA...thru...weather reporting service." Add note, "If local altimeter not received use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This becomes VOR RWY 18 AMDT 6A.

Manistee

Manistee County-Blacker
Michigan
VOR RWY 27 AMDT 9...
Effective: 12/18/91
FDC 1/6336/MBL/ FI/P Manistee County-Blacker, Manistee, MI. VOR RWY 27 AMDT 9...delete notes, "obtain local altimeter.. thru...visibilities ¾ mile.", "alternate minimums NA...thru...reporting service, CAT D 800 2¼." Add note, "If local altimeter not received use traverse city altimeter setting and increase all MDA's 180 feet." Alternate minimums standard, CAT D 800 2¼. This is VOR RWY 27 AMDT 9A.14.

Manistee

Manistee County-Blacker
Michigan
VOR RWY 9 AMDT 9...
Effective: 12/18/91
FDC 1/6337/MBL/ FI/P Manistee County-Blacker, Manistee, MI. VOR RWY 9 AMDT 9...delete notes, "obtain local altimeter on CTAF...thru...and all visibilities ¾ mile.", "alternate minimums NA...thru...reporting service, CAT D 800 2¼." Add note, "if local altimeter not received use traverse city altimeter setting and increase all MDA's 180 feet." Alternate minimums standard, CAT D 800 2¼. This is VOR RWY 9 AMDT 9A.

Benton Harbor

Ross Field-Twin Cities
Michigan
NDB RWY 27 AMDT 9...
Effective: 12/18/91
FDC 1/6341/BEH/ FI/P Ross Field-Twin Cities, Benton Harbor, MI. NDB RWY 27 AMDT 9...missed approach... climb to 2400 then right turn direct BE LOM and hold. Hold east, right turns, 274 inbound. This is NDB RWY 27 AMDT 9A.

Benton Harbor

Ross Field-Twin Cities
Michigan
ILS RWY 27 AMDT 6...
Effective: 12/18/91
FDC 1/6342/BEH/ FI/P Ross Field-Twin Cities, Benton Harbor, MI. ILS RWY 27 AMDT 6...missed approach... climb to 2400 then right turn direct MALLY LOM and hold. Hold east, right turns, 273 inbound. This is ILS RWY 27 AMDT 6A.

Escanaba

Delta County
Michigan
ILS/DME RWY 9 AMDT 3...
Effective: 12/19/91
FDC 1/6354/ESC/ FI/P Delta County, Escanaba, MI. ILS/DME RWY 9 AMDT 3...delete notes, "when control zone...thru...increase MDA's 240 feet.", "activate MALSR...thru...VASI RWYS 18–36 CTAF.", "alternate minimums NA...thru...weather reporting service." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet."

Alternate minimums standard, CAT D 700–2. This is ILS/DME BC RWY 9 AMDT 3A.

Norfolk

Norfolk/Karl Stefan Memorial
Nebraska
ILS RWY 1 AMDT 3...
Effective: 12/30/91
FDC 1/6466/OFK/ FI/P Norfolk/Karl Stefan Memorial, Norfolk, NE. ILS RWY 1 AMDT 3...MA INST...climb to 4000 then RT direct OFK VOR/DME and hold. TRML RTES OFK and OLU to SLAYS INT... MIM ALT 4000. This becomes ILS RWY 1 AMDT 3A.

Laurens

Laurens County
South Carolina
NDB RWY 7 AMDT 1...
Effective: 12/19/91
FDC 1/6347/34A/ FI/P Laurens County, Laurens, SC. NDB RWY 7 AMDT 1...change all references RWY 7–25 to 8–26. This becomes NDB RWY 8 AMDT 1A.

Lawerenceburg

Lawerenceburg Muni
Tennessee
NDB RWY 16 AMDT 3...
Effective: 12/24/91
FDC 1/6426/2M2/ FI/P Lawerenceburg Muni, Lawerenceburg, TN NDB RWY 16 AMDT 3...CHG all REF RWY 16/34 to 17/35. This becomes NDB RWY 17 AMDT 3A.

[FR Doc. 92–749 Filed 1–10–92; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 61

[A–1–FRL–40923]

Delegation of New Source Performance Standings (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); States of Connecticut, Maine, New Hampshire, Rhode Island and Vermont, and Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule amendment.

SUMMARY: This notice amends the Code of Federal Regulations by changing the mailing addresses of the Air Agencies for the States of Connecticut, Maine, New, Hampshire, Rhode Island and Vermont, and the Commonwealth of Massachusetts in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS), and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia C. Kelling of the EPA's Region I State Air Programs Branch, APS, JFK Federal Building, Boston, MA, (617) 565–3249; FTS 835–3249.

SUPPLEMENTARY INFORMATION:

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Equipment leaks, Intergovernmental relations, Mercury, Radionuclide, Radon and vinyl chloride.

Dated: December 6, 1991.

Paul G. Keough,

Acting Regional Administrator, Region I.

Parts 60 and 61 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 60.4 is amended by revising paragraph (b)(H), (b)(U), (b)(W), (b)(EE), (b)(OO), and (b)(UU) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(H) State of Connecticut, Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

* * * * *

(U) State of Maine, Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333.

* * * * *

(W) Commonwealth of Massachusetts, Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

* * * * *

(EE) State of New Hampshire, Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

* * * * *

(OO) State of Rhode Island, Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908.

* * * * *

(UU) State of Vermont, Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

* * * * *

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraphs (b)(H), (b)(U), (b)(W), (b)(EE), (b)(OO) and (b)(UU) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(H) State of Connecticut, Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

* * * * *

(U) State of Maine, Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333.

* * * * *

(W) Commonwealth of Massachusetts, Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

* * * * *

(EE) State of New Hampshire, Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

* * * * *

(OO) State of Rhode Island, Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908.

* * * * *

(UU) State of Vermont, Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

* * * * *

[FR Doc. 92–783 Filed 1–10–92; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[General Docket No. 84–1234, FCC 91–427]

Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; final decision on remand.

SUMMARY: The Commission has issued a Final Decision on Remand which reinstates the requirement that mobile satellite service (MSS) in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands (the upper L-band) shall be provided by a consortium of all willing and qualified applicants. The Commission also modifies the financial requirements for participation in the consortium to permit three entities whose applications previously were dismissed an opportunity to join the consortium at this time. Finally, the Commission affirms the American Mobile Satellite Corporation (AMSC) consortium as the authorized licensee to construct, launch and operate an MSS system in the upper L-band. This action is prompted by the decision of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded to the Commission two aspects of its MSS decisions for further consideration. This action is intended to ensure that new mobile satellite services are made available in the upper L-band spectrum, through a domestic provider, to United States consumers.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau (202) 634–1624, or Richard Welch, Office of General Counsel (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Decision on Remand regarding the Court of Appeals remand in the mobile satellite service proceeding, FCC 91–427, adopted December 27, 1991, and released January 6, 1992.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC and in the Domestic Facilities Public Reference Room, room 6220, 2025 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Final Decision on Remand

The Commission has issued a Final Decision on Remand reconsidering several decisions related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands (the upper L-band). This action is prompted by the decision of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded to the Commission for further consideration two aspects of its MSS decisions. See *Aeronautical Radio, Inc.* v. *FCC*, 928 F.2d 428 (D.C. Cir. 1991). First, the court faulted the manner in which the Commission imposed the requirement that applicants demonstrate their financial qualifications through a cash contribution. Second, the court vacated the Commission's consortium rule, holding that the Commission had not provided adequate justification for its decision to forego comparative hearings on the competing applications. The court also reversed the dismissal of the applications submitted by Global Land Mobile Satellite, Inc., Globesat Express and Mobile Satellite Service, Inc. (MSSI).

In response to the court's decision, the Commission issued a Tentative Decision on August 2, 1991, which outlined its tentative conclusions concerning the remand issues and invited comment by interested persons. See Tentative Decision, 56 FR 38404 (August 13, 1991), 6 FCC Rcd 4900 (1991). Eight persons commented on the Tentative Decision, and five persons filed reply comments. After considering those comments and the instructions of the Court of Appeals, the Commission issued its Final Decision on Remand generally affirming the tentative conclusions set forth in the Tentative Decision. The Final Decision on Remand: (1) Concludes that the Commission has statutory authority to adopt a consortium licensing rule in appropriate circumstances pursuant to its broad rulemaking authority under the public interest standard embodied in the Communications Act; (2) finds that adoption of the consortium licensing rule is reasonably and fully justified by compelling circumstances involving the international frequency coordination process that are unique to the MSS licensing proceeding; (3) modifies the criteria for participation in the consortium to allow the three applicants reinstated by the court to join the consortium without making any mandatory financial contribution; and (4) affirm the American Mobile Satellite Corporation (AMSC) consortium as the authorized domestic MSS licensee.

Legal Authority to Adopt the Consortium Requirement

The Final Decision on Remand concludes that the Commission has statutory authority to adopt in appropriate circumstances a licensing rule which requires that service be provided by a consortium comprised of all willing and eligible applicants in lieu of holding comparative hearings. Specifically, the Commission concludes that it may adopt the consortium requirement in this proceeding pursuant to its broad authority under the Communications Act to prescribe reasonable rules in the public interest. The Commission observes that 47 U.S.C. 309(e), as interpreted by *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945), does not mandate comparative hearings in all circumstances nor prohibit the Commission from employing a mandatory consortium licensing rule in this instance. Rather, the Commission finds that its adoption of the consortium rule as a fundamental licensing eligibility criterion is consistent with *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956). The Commission also finds that adoption of the consortium requirements is consistent with its longstanding practice of avoiding administrative hearings in common carrier and satellite licensing proceedings.

Considerations Justifying the Consortium Requirement

The Commission concludes that compelling factors unique to the MSS licensing proceeding indicate that the mandatory consortium approach, rather than comparative hearings, will best serve the public interest in these circumstances. International considerations render it highly unlikely that a domestic mobile satellite service would be implemented in the upper L-band unless the Commission authorizes an MSS licensee promptly. In order to ensure sufficient spectrum for a domestic MSS system in the upper L-bank frequencies, the United States must successfully complete the ongoing international frequency assignments and coordination process. The international negotiations are at a critical juncture, with several countries vying with the United States for limited spectrum in the upper L-band frequencies for MSS systems. The Commission finds that active and immediate participation by an authorized MSS licensee is critical to the success of ongoing U.S. efforts in the international frequency coordination process to secure needed spectrum for a domestic MSS system. The Commission concludes that the delay caused by conducting further time-consuming administrative proceedings (*ie.*, comparative hearings or a lottery) would severely weaken the U.S. negotiating position and threaten the ability of the United States to secure needed spectrum in the upper L-band for a domestic MSS system.

Reimposition of the Consortium Requirement

Accordingly, the Commission reinstates the requirement that MSS service in the upper L-band frequencies shall be provided by a consortium of all willing and qualified applicants. The Commission finds good cause for mailing the consortium requirement effective immediately upon publication in the **Federal Register** The exigent circumstances involving the international frequency coordination process make immediate implementation of the consortium rule necessary to enable the Commission to grant final authorization to a domestic MSS licensee.

Criteria for Participation in the Consortium

The Commission modifies the financial requirements previously imposed for participation in the consortium to permit the three entities whose applications were reinstated by the court an opportunity to join the existing AMSC consortium absent any mandatqry financial contribution. The Commission finds that the original financial contribution requirement is no longer necessary, since AMSC has become a fully operational enterprise with sufficient financial resources to construct, launch and operate the MSS system. Accordingly, Global, Globesat and MSSI thus may now join consortium in accordance with their willingness and ability to invest in AMSC. In addition, the Commission adopts the suggestion of MSSI to revise the timetable governing participation in the consortium to allow for an appeal of this Final Decision on Remand. Accordingly, the reinstated applicants will have 180 days in which to join the consortium, beginning on the date this Final Decision on Remand is no longer subject to judicial review.

Affirmation of AMSC as Authorized Licensee

In light of the conclusions described above, the Commission reaffirms the grant of the domestic MSS license to the AMSC consortium. AMSC is hereby authorized to construct, launch and operate an MSS system in the upper L-band frequencies subject to the terms, condition and specifications of the applications on file with the Commission, as amended, and as modified by prior Commission orders in this proceeding and by this Final Decision on Remand.

Conclusion

By this Final Decision on Remand, the Commission seeks to resolve the licensing issues that have been remanded to it in a manner that will best ensure the implementation of a U.S. domestic MSS system in the upper L-band spectrum. The Commission concludes that the exigencies of the international frequency coordination process require that it proceed immediately with a domestic licensee, and thus reinstates the requirement that MSS service shall be provided by a consortium of all willing and qualified applicants. If any other course is pursued, such as holding time—consuming comparative hearings, the United States likely will be unable to secure sufficient spectrum in the upper L-band to support a viable domestic MSS system.

Ordering Clauses

Accordingly, *It is ordered,* That the tentative conclusions set forth in the Tentative Decision in this proceeding concerning the issues remanded by the court of appeals are affirmed as indicated above.

It is further ordered, Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), That the consortium requirement vacated by the court of appeals is reinstated as indicated above. The consortium requirement shall be effective immediately upon publication in the **Federal Register.**[1]

It is further ordered, Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), That American Mobile Satellite Corporation is affirmed as the authorized licensee to construct, launch and operate an MSS system in the upper L-band frequencies, subject to the terms, conditions and specifications set forth in the applications, as amended, and as modified by prior Commission orders in this proceeding and by this Final Decision. This authorization shall be effective immediately upon publication in the **Federal Register.**

It is further ordered, That Global Land Mobile Satellite, Inc., Globesat Express, and Mobile Satellite Service, Inc., MAY PARTICIPATE in the licensed consortium subject to the terms and conditions specified in the Tentative Decision and this Final Decision. Failure by the above-referenced applicants to satisfy the specified terms and conditions for participation in the consortium will result in the dismissal of their applications for noncompliance with the Commission's rules and policies.

List of Subjects in 47 CFR Part 25

Communications common carriers, Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 92-604 Filed 1-10-92; 8:45 am]

BILLING CODE 6712-01-M

[1] Due to the exigent circumstances noted above concerning the international frequency coordination process, we find good cause for making the consortium requirement effective immediately upon publication in the **Federal Register.** 5 U.S.C. 553(d)(3). Immediate implementation of the consortium rule is necessary to grant final authorization to a domestic MSS licensee. As described above, the presence and participation of an authorized domestic MSS licensee during the ongoing international negotiations is critical to U.S. efforts to secure needed spectrum for a domestic MSS system. Unless the consortium requirement takes effect immediately there will no final, authorized MSS licensee to assist the Commission in the international frequency coordination process.

Proposed Rules

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-154-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening the comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would have required adjustment of the escape system girt bar locks. That proposal was prompted by a report of an escape slide that failed to deploy and fell to the ground. This condition, if not corrected, could result in the emergency escape system not being available during an emergency evacuation. This action revises the proposed rule by including a requirement to inspect and adjust, if necessary, certain additional Type I emergency exit escape system girt bar locks.

DATES: Comments must be received no later than February 12, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-154-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-154-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-154-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations applicable to certain Boeing Model 767 series airplanes which would have required adjustment of the escape system ball plunger for the girt bar locks was published in the Federal Register on August 30, 1991 (56 FR 42961). In effect, these adjustment requirements affected Type A exits and certain Type I exits. That action was prompted by a report of an escape slide that failed to deploy and fell to the ground. This condition, if not corrected, could result in the escape system not being available during an emergency evacuation.

Since the issuance of that proposal, the airplane manufacturer has advised the FAA that this condition could also affect certain Type I emergency exists that were omitted from the original service bulletin. The manufacturer has developed procedures for inspection and adjustment of the additional Type I emergency exit escape system ball plunger for the girt bar locks.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-52A0061, Revision 1, dated September 26, 1991, which describes procedures for inspection and adjustment of the ball plunger for the girt bar locks for Type A and Type I exists to ensure the proper retention of the girt bar to the girt bar carrier.

Since the unsafe condition described could also exist with regard to these additional emergency exit escape system configurations, the FAA has determined that it is necessary to revise the exiting proposal to add inspections and necessary adjustments of them. Since these new proposed requirements go beyond the scope of those originally proposed, the comment period has been reopened to provide additional time for public comment.

The paragraph designations of this Supplemental NPRM have been revised to be consistent with the standard Federal Register style.

Paragraph (b) of the Supplemental NPRM has been revised to specify the current procedures for submitting requests for alternative methods of compliance.

There are approximately 354 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 134 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $147,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-154-AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767-52A0061, Revision 1, dated September 26, 1991, certificated in any category.

Compliance: Required within the next 60 days after the effective date of this AD, unless previously accomplished.

To ensure proper retention of the girt bar to the girt bar carrier, accomplish the following:

(a) Adjust the ball plunger for the girt bar locks in accordance with Boeing Alert Service Bulletin 767-52A0061, Revision 1, dated September 26, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may occur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-752 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-147-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would have superseded an existing AD to require a one-time inspection of the landing gear normal selector mechanism to ensure that certain bolts are installed, and installation of these bolts, if necessary; repetitive operational tests of the hydraulic landing gear change-over valve mechanism; and modification of the undercarriage emergency release mechanism which, when installed, would terminate the need for the currently required operational tests. That proposal was prompted by the development of a modification which improves the existing design of the hydraulic landing gear change-over valve mechanism. This action revises the proposed rule by deleting the requirement to perform a one-time inspection of the normal selector mechanism for installation of correct bolts, and by adding new requirements for inspection and modification of the landing gear normal selector mechanism. The actions specified by this proposed AD are intended to prevent a gear-up landing.

DATES: Comments must be received by February 12, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-147-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-147-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-147-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-21-11, Amendment 39-6806 (55 FR 47847, November 16, 1990), which is applicable to British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 14, 1991 (56 FR 40281). That NPRM would have required a one-time inspection of the normal selector mechanism to ensure that certain bolts are installed, and installation of these bolts, if necessary; repetitive operational tests of the hydraulic landing gear change-over valve mechanism; and modification of the undercarriage emergency release mechanism which, when installed, would terminate the need for the currently required operational tests. That NPRM was prompted by the development of modifications which improve the existing design of the landing gear normal selector mechanism and the hydraulic landing gear change-over valve mechanism. The proposed actions were intended to prevent a gear-up landing.

Since the issuance of that NPRM, the FAA has received reports of additional difficulties experienced with the landing gear normal selector mechanism due to a missing connector and binding in the selector mechanism. These conditions, if not corrected, could result in improper functioning and binding of the landing gear normal selector system and the landing gear emergency release mechanism.

Subsequently, British Aerospace has issued Service Bulletin ATP 32-30, Revision 2, dated April 22, 1991, which describes procedures to perform a one-time visual inspection of the swivel assembly in the teleflex cable to ensure installation of a teleflex cable connector and, if the connector is not installed, installation of a connector and replacement teleflex cable; and installation of clevis pins in lieu of bolts. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory. The FAA has examined this service information, and has determined that it is necessary to include the actions described in the service bulletin in this proposal.

Paragraph (a) of the original Notice proposed to require an inspection of the normal operating linkage to determine if certain part-numbered bolts were installed; if any other part-numbered bolts were found, those bolts were to be removed and replaced with bolts of the appropriate part number. The CAA has recently completed a review of the undercarriage normal selection mechanism and, as a result of their findings, has submitted documentation supporting the use of clevis pins in lieu of these bolts. The CAA advises that clevis pins are installed on the undercarriage selection mechanism of another British Aerospace airplane model that has a mechanism similar to that of the Model ATP, and no defects related to the use of these pins have been reported in 6 million flying hours. The CAA presented the manufacturer's view that the installation of clevis pins in lieu of bolts provides improved protection against maintenance errors (i.e., over-tightening of bolts), and does not degrade the reliability of the landing gear normal selector mechanism. After further review, the FAA concurs with the findings of the CAA. A requirement to install clevis pins in lieu of bolts in the normal selector mechanism has been added to this proposal.

The economic analysis, below, has been revised to reflect the current number of Model ATP series airplanes on the U.S. Registry, and to include additional work hours needed to accomplish further actions proposed by this proposed rule.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

It is estimated that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 113 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $821 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $63,324.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6806 and by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-147-AD. Supersedes AD 90-21-11, Amendment 39-6806.

Applicability: Model ATP series airplanes, serial numbers 2001 through 2037, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 24 hours after November 29, 1990 (the effective date of AD 90-21-11, Amendment 39-6806), and thereafter at intervals not to exceed 30 hours time-in-service, perform an operational test of the hydraulic landing gear change-over valve mechanism, in accordance with British Aerospace Alert Service Bulletin A-ATP-32-26, Revision 1, dated September 25, 1990. Any binding or stiffness must be corrected prior to further flight, in accordance with instructions in the manufacturer's maintenance manual.

(b) Within 60 days after the effective date of this AD, modify the undercarriage emergency release mechanism and perform the associated functional test on the up lock release mechanism, in accordance with the accomplishment instructions in British Aerospace Service Bulletin ATP-32-29, Revision 1, dated June 6, 1991.

(c) Modification of the undercarriage emergency release mechanism, in accordance with British Aerospace Service Bulletin ATP-32-29, Revision 1, dated June 6, 1991, constitutes terminating action for the repetitive operational tests required by paragraph (a) of this AD.

(d) Within 60 days after the effective date of this AD, accomplish the following in accordance with British Aerospace Service

Bulletin ATP-32-30, Revision 2, dated April 22, 1991

(1) Perform a one-time visual inspection of the swivel assembly in the landing gear normal selector mechanism teleflex cable to ensure that the correct connector is fitted. If the correct connector is not fitted, prior to further flight, install a connector and replacement teleflex cable.

(2) Install clevis pins, at specified locations, in lieu of bolts in the normal selector mechanism.

(3) Perform functional tests of the landing gear normal selector mechanism.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-751 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-42-90]

RIN 1545-A069

Bad Debt Reserves of Thrift Institutions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by section 593 of the Internal Revenue Code. The proposed regulations provide guidance on changing from and returning to this method of accounting. This guidance is needed because thrifts are becoming ineligible, in increasing numbers, to maintain bad debt reserves under Code section 593. The proposed regulations are intended to facilitate changes from and returns to the reserve method of Code section 593.

DATES: Written comments must be received by April 13, 1992. Requests to speak at the public hearing that is scheduled for June 5, 1992, with outlines of oral comments, must be received by May 18, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to speak at the public hearing, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-42-90), room 5228, Washington, DC 20044. In the alternative, comments and requests (with outlines) may be hand delivered to: Internal Revenue Service, 1111 Constitution Ave., NW., CC:CORP:T:R (FI-42-90), room 5228, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, telephone 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in §§ 1.593-12(c)(2), 1.593-13(b) and 1.593-14(b)(1). This information is required by the Internal Revenue Service in connection with changes in accounting method. This information will be used to monitor and approve changes in accounting method that occur under these regulations. The likely respondents are thrift institutions that become ineligible to use the reserve method of Code section 593.

The time burden estimate for the collections of information in these regulations is reflected in the burden of Form 3115 (Application for Change in Accounting Method).

Background

The proposed regulations contained in this document provide guidance for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by Code section 593. The regulations set forth rules on changing from and returning to this method of accounting, and the regulations provide procedures for complying with these rules. These regulations are issued under the authority of code sections 446 and 481.

Need for the Regulations

Increasingly, thrift institutions are becoming ineligible to maintain bad debt reserves under section 593. Often a voluntary change from a thrift charter to a commercial bank charter is the cause of the ineligibility, because institutions chartered as commercial banks are not eligible to use the reserve method of section 593.

Ineligibility has also increased because of legislative changes. The Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99-514, enacted section 953(a)(2), which requires all thrifts to meet the 60-percent asset test of section 7701(a)(19)(C) in order to maintain reserves under section 593. In addition, the 1986 Act amended section 593(b)(2) to reduce from 40 to 8 percent the percentage of taxable income allowable as an addition to a reserve under section 593, thereby making the reserve method of section 593 less attractive.

For these and other reasons, thrifts are increasingly unwilling or unable to remain eligible to use the reserve method of section 593. These regulations are proposed in order to provide guidance on the consequences of becoming ineligible.

Methods of Accounting for Bad Debts

The Code requires most taxpayers to use the specific charge-off method of accounting for bad debts. Under this method, deductions are allowed for bad debts at the time the debts actually become worthlesss. In contrast, under a reserve method, deductions are allowed currently for debts that may become worthless in the future.

Both sections 593 and 585(b) of the Code provide reserve methods of accounting for bad debts. The reserve methods of sections 593 and 595(b) differ with respect to the rules they provide, including the rules for computing deductible additions to a reserve. The reserve method of section 593 provides more liberal rules for computing these additions.

The reserve methods of sections 593 and 585(b) also differ with respect to the institutions to which they apply. The reserve method of section 593 is available only to thrift institutions that meet the requirements of sections 593(a)(1) and 593(a)(2). The reserve method of section 585(b) is available only to banks that are not "large" within the meaning of section 585(c)(2) (*i.e.*, banks with assets of $500 million or less). Large banks must use the specific

charge-off method of accounting for bad debts. Thrifts that are not eligible to use the reserve method of section 593 are eligible to use the reserve method of section 585(b) if they satisfy the eligibility requirements otherwise applicable to banks, such as owning assets of $500 million or less.

Thus, a thrift with assets of over $500 million (a "large thrift") that becomes ineligible to use the reserve method of section 593 must change to the specific charge-off method because it is ineligible for the reserve method of section 585(b). A thrift with assets of $500 million or less (a "small thrift") that becomes ineligible to use the reserve method of section 593 must change to either the reserve method of section 585(b) or the specific charge-off method.

Sections 446 and 481

Code section 446 and the regulations thereunder provide general rules concerning methods of accounting. Section 1.446–1(e)(2)(ii)(*a*) of the Income Tax Regulations states that a change in the treatment of any material item used in the taxpayer's overall plan of accounting is a change in accounting method. A change from, or return to, the reserve method of section 593 is a change in accounting method under section 446. See Rev. Rul. 85–171, 1985–2 C.B. 148.

Code section 446(e) provides that the Commissioner's consent must be obtained to change an accounting method. This requirement applies even when the taxpayer is using an impermissible method of accounting. Thus, the Commissioner's consent is needed for a change from, or return to, the reserve method of section 593.

Code section 481(a) provides that upon a change in accounting method, adjustments must be made as necessary to prevent amounts from being duplicated or omitted in computing taxable income. An institution's treatment of bad debts affects the timing of its computation of taxable income, and a change from or return to the reserve method of section 593 is a change in accounting method that requires an adjustment under section 481(a). See Rev. Rul. 85–171.

The Service has broad discretion to determine the proper manner of effecting a change in accounting method. Section 1.446–1(e)(3)(ii) of the regulations authorizes the Commissioner to prescribe administrative procedures setting forth limitations, terms, and conditions deemed necessary for a taxpayer to obtain consent to a change in accounting method, including limitations, terms, and conditions for determining and including an adjustment under section 481(a).

Sections 585(c)(3) and 585(c)(4)

Section 585(c), enacted by the 1986 Act, makes large banks ineligible for the reserve method of section 585(b). In effect, section 585(c) requires all large banks that maintain reserves under section 585 to change to the specific charge-off method. Sections 585(c)(3) and 585(c)(4) provide special rules for large banks to follow in making this change, including rules that affect the section 481(a) adjustment. Section 585(c)(3) provides a recapture procedure with a special period over which to take the section 481(a) adjustment into account, and section 585(c)(4) provides a cut-off procedure that replaces the section 481(a) adjustment. For institutions to which they apply, these special rules modify the generally applicable rules promulgated under sections 446 and 481.

The Service historically has administered changes from the reserve method of section 593 by applying the terms and conditions ordinarily imposed under section 481(a). See Rev. Rule. 85–71. In the General Explanation of the Tax Reform Act of 1986 (Blue Book) at page 556, the staff of the Joint Committee on Taxation indicates that large thrifts that become ineligible to use the reserve method of section 593 may use the special procedures provided in sections 585 (c)(3) and (c)(4) for large banks required to change to the specific charge-off method. However, no such suggestion is contained in the House, Senate or Conference Committee Report on the 1986 Act. The statutory language itself does not clearly provide that former thrifts may use the special rules of sections 585 (c)(3) and (c)(4). Rather, the language of section 585(c) evinces a Congressional intent that these rules apply only to financial institutions that have maintained reserves under section 585(b).

Under the statute, a financial institution is eligible to use the special rules of sections 585 (c)(3) and (c)(4) only if it has assets that exceed $500 million. Thus, when a thrift with assets of $500 million or less becomes ineligible to use the reserve method of section 593, it must recapture some or all of its reserve under the generally applicable rules of section 481(a). Applying the special rules without limitation to large former thrifts would create inequity between large and small former thrifts that change from the reserve method of section 593 for the same reason. In the absence of express language in the statute or the committee reports, it does not seem reasonable to infer that Congress intended this inequity.

There are also longstanding differences between the tax treatment of bad debt reserves of thrifts and banks that make it unlikely Congress intended the special rules of sections 585 (c)(3) and (c)(4) to apply to thrifts. Since 1952, when thrifts first became subject to federal income tax, the Code has provided special rules for the reserves of thrifts that did not apply to reserves maintained by banks. Applying sections 585 (c)(3) and (c)(4) to changes from the reserve method of section 593 would be inconsistent with the differences in composition and treatment of thrift and bank reserves. For example, application of section 585(c)(4) could permit circumvention of the recapture requirement of section 593(e).

For the foregoing reasons, the Service has determined that, notwithstanding the statement in the Blue Book, the special rules of sections 585 (c)(3) and (c)(4) apply only to institutions that have maintained reserves under section 585(b) before being required to change to the specific charge-off method. Accordingly, the proposed regulations do not apply sections 585 (c)(3) and (c)(4) to changes from the reserve method of section 593.

Instead, consistent with its historical practice, the Service will administer changes from the reserve method of section 593 by making adjustments pursuant to its general regulatory authority under section 481(c). Pursuant to this authority, the proposed regulations permit a large thrift that becomes ineligible to use the reserve method of section 593 to elect to apply section 585 (c)(3) or (c)(4) to the portion of its reserve that is comparable to that of a bank (*i.e.*, the portion equivalent to a reserve maintained under section 585(b)).

In effect, this approach treats a large thrift like a large bank to the extent that its reserve is comparable to that of a bank. This approach is consistent with the Congressional intent underlying sections 585 (c)(3) and (c)(4), and it provides equity between large thrifts and large banks. This approach does not create inequity between large thrifts and small thrifts, because a small thrift that becomes ineligible to use the reserve method of section 593 may maintain a reserve under section 585(b). Moreover, this approach does not allow circumvention of the recapture requirement of section 593(e), because the recapture requirement generally does not apply to the portion of a thrift's reserve that is equivalent to a reserve maintained under section 585(b).

Because sections 585 (c)(3) and (c)(4) apply to a large bank's reserve maintained under section 585(b), it is appropriate to apply these sections to the comparable portion of a large thrift's reserve.

Explanation of Provisions

The regulations contained in this document propose to add new §§ 1.593–12 through 1.593–14. Proposed § 1.593–12 provides basic rules for thrift institutions that become ineligible to use the reserve method of section 593 and provides effective dates and transitional rules. Proposed § 1.593–13 provides an automatic procedure for changing from the reserve method of section 593. Proposed § 1.593–14 provides guidance for institutions that regain their eligibility to use this method.

Section 1.593–12: Thrifts Ineligible for Section 593 Reserve

The proposed regulations apply generally to thrift institutions that become ineligible to use the reserve method of section 593 ("former thrifts"). Proposed § 1.593–12(a)(1) states the basic requirement that a former thrift must change from the reserve method of section 593.

The reserve method of section 585(b) is available to former thrifts, but is not available to former thrifts that are "large" within the meaning of section 585(c)(2). Therefore, proposed § 1.593–12(a)(1) provides that whether a former thrift must change to the specific charge-off method of accounting for bad debts, or has the option of changing to the reserve method of section 585(b), depends on whether the institution is large. Proposed § 1.593–12(b)(3) defines the term "large institution" for this purpose.

Proposed § 1.593–12(a)(2) provides that the principles of § 1.593–13 apply to method changes that are required by section 381(c)(4), which is generally triggered by corporate mergers and other similar tax-free reorganizations. Rules may be prescribed for applying these principles to changes required by section 381(c)(4). Under these rules, any tax consequences of the change generally will be taken into account ratably over 6 taxable years (rather than in one taxable year, as generally required under section 381(c)(4)).

The regulations are proposed to be effective generally only for taxable years ending after the date that is 30 days after the regulations are finalized (§ 1.593–12(c)(1)). Thus, the regulations will apply to institutions that become ineligible to use the reserve method of section 593 in any taxable year ending after the date that is 30 days after the regulations are finalized.

Existing law governs changes from (and to) the reserve method of section 593 for taxable years before the regulations apply. As discussed above, under existing law such a change is a change in accounting method under section 446, requiring the Commissioner's consent and a section 481(a) adjustment. Under existing law, a large former thrift may not use the reserve method of section 585(b) for taxable years beginning after 1986, and sections 585 (c)(3) and (c)(4) do not apply to its change from the reserve method of section 593.

The proposed regulations allow certain former thrifts an opportunity to request the Commissioner's consent to apply the regulations for the first taxable year beginning after 1986 in which the thrift becomes ineligible to use the reserve method of section 593 and for all succeeding taxable years ("retroactive application"). Retroactive application would permit institutions to use the provisions of the regulations applying sections 585 (c)(3) and (c)(4) to the portion of a large former thrift's reserve that is comparable to that of a bank (proposed § 1.593–13(c) (3) and (4)); the safe harbor method for restating a reserve on a return to the reserve method of section 593 (proposed § 1.593–14(d)(2)(i)(C)); and the one-year "footfault" election (proposed § 1.593–14(d)(2)(ii)).

Prior to finalization of the regulations, the Service intends to issue an administrative pronouncement setting forth procedures for requesting consent to retroactive application and requirements for obtaining this consent. It is expected that the request for consent will be made by filing Form 3115 (Application for Change in Accounting Method) in the manner provided in proposed § 1.593–12(c)(2)(ii). It is also expected that this form will be required to be filed no later than 6 months after the regulations are finalized.

However, if the Service contacts a former thrift for an examination of any federal income tax return (or has so contacted a former thrift and the examination has not been concluded), and the former thrift has not yet properly filed a Form 3115 to request the Commissioner's consent to change from the reserve method of section 593, the former thrift will not be eligible to request consent to retroactive application. In such a case, the change in accounting method will be imposed in accordance with the procedures that apply to a change in a Category A method of accounting pursuant to an examination of a taxpayer's return. These procedures generally require the full amount of a section 481(a) adjustment resulting from the change to be taken into account in the taxable year of the change.

Notwithstanding the preceding paragraph and proposed § 1.593–13(a)(2), special rules apply to certain former thrifts that have not been contacted for examination or, if they have been contacted for examination, no issue relating to the former thrift's treatment of its required change from the reserve method of section 593 in its first ineligibility year beginning after 1986 has yet been raised. Such former thrifts may file Form 3115 by April 13, 1992, in order to request either (1) consent to retroactive application, or (2) consent to change their method of accounting for bad debts in the current taxable year in accordance with § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder).

The applicable requirements for obtaining the Commissioner's consent to retroactive application will depend on whether the statute of limitations for a former thrift's first ineligibility year beginning after 1986 remains open when the regulations are finalized. If the statute remains open, the former thrift will be required to file amended returns as provided in proposed § 1.593–12(c)(2)(iii). It is expected that if the statute does not remain open, to obtain consent the former thrift will be required to reach agreement with the Commissioner regarding the terms, conditions, and adjustments relating to an accounting method change that is implemented under the retroactive application.

Section 1.593–13: Changes From Reserve Method of Section 593

Proposed § 1.593–13(a)(1) provides that a change from the reserve method of section 593 is a change in accounting method under section 446, and an adjustment under section 481(a) is required. Proposed § 1.593–13 provides an automatic procedure for former thrifts to follow in changing from the reserve method of section 593. If a former thrift complies with this procedure, its change will be treated as made with the consent of the Commissioner. Even if a former thrift is under audit, in appeals, or in court, the automatic procedure ordinarily is available if its use does not affect, and is not affected by, resolution of the audit, appeal, or court proceeding (proposed § 1.593–13(a)(2)).

Proposed § 1.593–13(c) provides rules for changing from the reserve method of

section 593 to the specific charge-off method of accounting for bad debts. Paragraph (2) of this section provides the standard method for determining and including the section 481(a) adjustment attributable to a former thrift's bad debt reserve. Under this method, a former thrift must restate its reserve to zero as of the first day of the year of change. The amount of the former thrift's section 481(a) adjustment is the amount of its reserve immediately before the restatement, and this amount must generally be included in the former thrift's income ratably over 6 taxable years.

Paragraph (3) of proposed § 1.593–13(c) provides an alternative "recapture" method for determining and including the section 481(a) adjustment. This method may be elected only by a large former thrift. Under this method, as under the standard method, a former thrift must first restate its reserve to zero as of the first day of the year of change, and the amount of its section 481(a) adjustment is the amount of its reserve immediately before the restatement. Under the recapture method, this adjustment is divided into two parts. The "section 585 portion" of the adjustment is generally the amount the reserve would have been on the first day of the year of change if the former thrift had, since its formation, maintained a reserve under the provisions of section 585 that are in effect on that first day. The proposed regulations explain how to determine this amount. (This amount is also referred to as the "section 585 level" of the reserve.) The remainder, if any, of the former thrift's section 481(a) adjustment is the "section 593 portion" of the adjustment. Pursuant to proposed § 1.593–13(c)(3), the recapture method provided under section 585(c)(3) and § 1.585–6 applies to the section 585 portion of the adjustment. The section 593 portion of the adjustment must generally be included in the former thrift's income ratably over 6 taxable years.

Paragraph (4) of proposed § 1.593–13(c), which is another alternative that may be elected only by large former thrifts, provides a partial cut-off method for making the change in accounting method. Under this method, a former thrift must restate its reserve to the section 585 level as of the first day of the year of change. Pursuant to proposed § 1.593–13(c)(4), the cut-off method provided under section 585(c)(4) and § 1.585–7 applies to the former thrift's restated reserve. The amount of the former thrift's section 481(a) adjustment is the amount by which the reserve balance, immediately before the restatement, exceeds the amount to which the reserve is restated. The amount of this adjustment must generally be included in the former thrift's income ratably over 6 taxable years.

Proposed § 1.593–13(d) provides rules for changing from the reserve method of section 593 to the reserve method of section 585(b). These rules apply only to former thrifts that are not large, because large former thrifts are ineligible to use the reserve method of section 585(b). The rules for determining the former thrift's restated reserve are essentially the same as those under proposed § 1.593–13(c)(4). However, the former thrift's restated reserve will be maintained under the reserve method of section 585(b), rather than discontinued under a cut-off procedure. Proposed § 1.593–13(d)(4) explains how to determine a former thrift's base year amount after it changes to the reserve method of section 585(b).

Proposed § 1.593–13(e) permits a former thrift to elect to net section 481(a) adjustments on a change from the reserve method of section 593. If this election is made, a former thrift must net a positive (or negative) section 481(a) adjustment against any remaining negative (or positive) section 481(a) adjustment resulting from a prior change in the former thrift's method of accounting for bad debts.

Section 1.593–14: Requalification for Section 593

Proposed § 1.593–14 provides guidance for former thrifts that regain their eligibility to use the reserve method of section 593 ("requalified thrifts"). A requalified thrift may use the specific charge-off method of accounting for bad debts or the reserve method of section 593. To change to either of these methods, a requalified thrift must follow the rules of proposed § 1.593–14.

Proposed § 1.593–14(b) requires a requalified thrift to obtain the Commissioner's consent to the change. This section also explains how a requalified thrift requests consent, and when the requalified thrift may assume that consent has been granted.

Proposed § 1.593–14(c) provides rules for a requalified thrift changing from the reserve method of section 585 to the specific charge-off method. These rules are essentially the same as those of proposed § 1.593–13(c)(2), which provides the standard method for determining and including a section 481(a) adjustment for a former thrift changing from the reserve method of section 593 to the specific charge-off method.

Proposed § 1.593–14(d) provides rules for a requalified thrift that returns to the reserve method of section 593. Under these rules, the requalified thrift must establish or restate its bad debt reserve to the "section 593 level" as of the first day of the year change. This level generally represents the amount that the reserve would have been on that first day if the requalified thrift had, since its formation, maintained a reserve under the provisions of section 593 that are in effect on that first day. Pursuant to proposed § 1.593–14(d)(2)(i), this amount may be determined under an experience method, a percentage of taxable income method, or a safe harbor method. The safe harbor method takes into account such factors as the creation of a thrift's supplemental reserve in 1962.

Proposed § 1.593–14(d)(2)(ii) provides an election for requalified thrifts that obtain the Commissioner's consent to return to the reserve method of section 593 in the year following the year in which they changed from this method. This election allows the requalified thrift to restate its reserve (and make the necessary correlative adjustments) as if it had not been required to change, and had not changed, from the reserve method of section 593 in the preceding year.

Proposed § 1.593–14(d)(3) provides rules for determining a section 481(a) adjustment for a requalified thrift that returns to the reserve method of section 593 and that is not eligible for, or does not make the election under, § 1.593–14(d)(2)(ii). The amount of this adjustment generally is the amount by which the requalified thrift's new reserve balance exceeds its reserve balance, if any, as of the close of the year preceding the year of change. The amount of this section 481(a) adjustment must generally be deducted ratably over 6 taxable years.

Proposed § 1.593–14(d)(4) provides an election to net the section 481(a) adjustment resulting from a return to the reserve method of section 593 with any outstanding section 481(a) adjustment resulting from a prior change in the institution's method of accounting for bad debts. Proposed § 1.593–14(d)(4) also explains how to net section 481(a) adjustments and take a net section 481(a) adjustment into account.

Revenue Procedure 85–8, 1985–1 C.B. 495, provides a procedure for changing from the specific charge-off method of accounting for bad debts to a reserve method. When finalized, the proposed regulations will supersede Rev. Proc. 85–8 for requalified thrifts returning to the reserve method of section 593 and for

former thrifts changing to the reserve method of section 585.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing on these proposed regulations will be held on June 5, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register.**

List of Subjects in 26 CFR 1.581 Through 1.601–1

Banks, Income taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, part 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * §§ 1.593–12 through 1.593–14 also issued under 26 U.S.C. 446 and 481.

Par. 2. New §§ 1.593–12, 1.593–13 and 1.593–14 are added to read as follows:

§ 1.593–12 Thrift institutions that become ineligible to use the reserve method of section 593.

(a) *Requirement of change*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, this section applies to any former thrift institution (as defined in paragraph (b)(1) of this section) that maintains a reserve for bad debts under section 593 at the time it becomes a former thrift institution. A former thrift institution to which this section applies must change, in any ineligibility year (as defined in paragraph (b)(2) of this section), from the reserve method of accounting for bad debts allowed by section 593. If the institution is a large institution (as defined in paragraph (b)(3) of this section), it must change to the specific charge-off method of accounting for bad debts in accordance with § 1.593–13. If the institution is not a large institution, it must change either to the specific charge-off method or to the reserve method allowed by section 585, in accordance with § 1.593–13. Section 1.593–14 provides rules for former thrift institutions that regain their eligibility to use the reserve method of section 593; these rules include procedures for returning to the reserve method of section 593 and for changing from the reserve method of section 585 to the specific charge-off method.

(2) *Certain section 381(a) transactions.* This paragraph (a)(2) applies if a former thrift institution becomes ineligible to maintain a reserve under section 593 in a transaction to which section 381(a) applies, and section 381(c)(4) and § 1.381(4)–1 require the institution to change from the reserve method of section 593 because parties to the section 381(a) transaction use different methods of accounting for bad debts. If this paragraph (a)(2) applies, section 381(c)(4) and § 1.381(c)(4)–1 determine the method of accounting for bad debts to which the institution must change. However, the principles of § 1.593–13 determine the manner of effecting the change. The Secretary may prescribe rules for applying the principles of § 1.593–13 in these section 381(a) transactions.

(3) *Noncompliance with requirement of change.* If a former thrift institution fails to comply with this section and § 1.593–13 for an ineligibility year, the institution will be considered to have an impermissible method of accounting for bad debts in the ineligibility year and subsequent years. Such an institution must comply with the requirement of § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder) to obtain the Commissioner's consent to change to a permissible method of accounting for bad debts. The procedure for change provided by § 1.593–13 is available only for an ineligibility year.

(4) *Automatic procedure for change limited to former thrift institutions.* An institution that is eligible to maintain a reserve for bad debts under section 593 for a taxable year is not a former thrift institution within the meaning of paragraph (b)(1) of this section for that taxable year. Therefore, such an institution may not, for that taxable year, use the procedure for change provided by § 1.593–13. However, such an institution may request the Commissioner's consent to change in that taxable year to the specific charge-off method of accounting for bad debts, in accordance with § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder).

(5) *Changes by former thrift institutions not required by this section.* If a former thrift institution that maintains a reserve under section 585 becomes a large institution (as defined in paragraph (b)(3) of this section), the institution must change to the specific charge-off method of accounting for bad debts as required by section 585(c) and the regulations thereunder. A former thrift institution that is not a large institution may request the Commissioner's consent to change from the reserve method of section 585 to the specific charge-off method, or from the specific charge-off method to the reserve method of section 585, in accordance with § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder).

(b) *Definitions.* The following definitions apply for purposes of this section and §§ 1.593–13 and 1.593–14:

(1) *Former thrift institution.* An organization is a former thrift institution for any taxable year in which the organization is ineligible for any reason to maintain a reserve for bad debts under section 593, if for any preceding taxable year it was eligible to maintain a reserve under section 593. (For this purpose, an organization is considered eligible to maintain a reserve under section 593 for a taxable year if the organization satisfies the requirements of sections 593(a)(1) and 593(a)(2) for that taxable year.) In addition, any organization that establishes a reserve under section 593 pursuant to a transfer described in section 351 or section 381 and, in the same taxable year, becomes ineligible to maintain the reserve, is a former thrift institution for that taxable year and for any succeeding taxable year in which the organization is ineligible to maintain a reserve under section 593.

(2) *Ineligibility year.* An ineligibility year is any taxable year in which an institution is ineligible to maintain a reserve for bad debts under section 593 after being eligible to maintain, and maintaining, a reserve under section 593 for the immediately preceding taxable year. For an institution described in the last sentence of paragraph (b)(1) of this

section, the taxable year of the transfer referred to in that sentence also is an ineligibility year.

(3) *Large institution.* An institution is a large institution if, for the taxable year (or for any preceding taxable year in which this section applies to the institution), the institution is both—

(i) A former thrift institution (as defined in paragraph (b)(1) of this section), and

(ii) An institution described in paragraph (i) or (ii) of § 1.585–5(b)(1).

(c) *Effective date*—(1) *In general.* This section and § § 1.593–13 and 1.593–14 are effective for taxable years ending after (*Insert date that is 30 days after this document is published as a final regulation in the* **Federal Register**).

(2) *Retroactive application of regulations with consent of Commissioner*—(i) *In general.* An institution generally may request the Commissioner's consent to apply this section and § § 1.593–13 and 1.593–14 for its first ineligibility year that begins after December 31, 1986, and for all succeeding taxable years. However, an institution may not request this consent if, as of January 13, 1992, the Internal Revenue Service has raised on audit an issue relating to the institution's treatment of its required change from the reserve method of section 593 in its first ineligibility year that begins after December 31, 1986. An administrative procedure will be prescribed to set forth rules on requesting and obtaining the Commissioner's consent under this paragraph (c)(2) (including, in certain circumstances, the non-applicability of § 1.593–13(a)(2)).

(ii) *Manner of making request.* An institution must make any request under this paragraph (c)(2) by filing a completed Form 3115 (Application for Change in Accounting Method) for the change from the reserve method of section 593 required in its first ineligibility year beginning after December 31, 1986. See § 1.446–1(e)(3)(i) and any applicable administrative procedure prescribed thereunder. The form must state that the institution is requesting retroactive application of § § 1.593–12, 1.593–13 and 1.593–14 under § 1.593–12(c)(2). The form must be filed with the Commissioner of Internal Revenue (CC:IT&A:9), 1111 Constitution Avenue, NW., Washington, DC 20224.

(iii) *Amended returns.* If an institution's original federal income tax return for the ineligibility year or any other year for which retroactive application is requested is filed before the request is made, the institution can obtain the Commissioner's consent only if it agrees to file amended federal income tax returns for all such taxable years (for which the statute of limitations under section 6501 has not expired) no later than (*Insert date that is 6 months after this document is published as a final regulation in the* **Federal Register**). Any such amended federal income tax return will be treated as the institution's original return for purposes of § § 1.593–13 and 1.593–14. The Commissioner may condition its consent on the institution's agreement to extend the statute of limitations for taxable years affected by the retroactive application.

(d) *Examples.* For purposes of the examples in this section, the thrift institution is a calendar year taxpayer and is not a member of a parent-subsidiary controlled group. The following examples illustrate the principles of this section:

Example 1. Thrift institution T is eligible to maintain, and does maintain, a reserve for bad debts under section 593 for all of its taxable years before 1992. T's average total assets for 1992 (determined under § 1.585–5(c)) do not exceed $500 million. During 1992, T changes its charter to a commercial bank charter in a transaction to which section 381(a) applies. This charter change causes T to become ineligible to maintain a reserve under section 593. Therefore, in 1992 T becomes a former thrift institution within the meaning of § 1.593–12(b)(1). For T, 1992 is an ineligibility year within the meaning of § 1.593–12(b)(2). The section 381(a) transaction is a transfer in connection with a reorganization described in section 368(a)(1)(F), and the parties to the transaction do not use different methods of accounting for bad debts on the date of the transaction; accordingly, T is not required to change its method of accounting for bad debts pursuant to section 381(c)(4) and § 1.381(c)(4)–1. Therefore, § 1.593–12(a)(2) does not apply. Because T's average total assets for 1992 do not exceed $500 million, T is not an institution described in § 1.585–5(b)(1)(i). Nor is T a large institution within the meaning of § 1.593–12(b)(3). Pursuant to § 1.593–12, in 1992 T must change either to the specific charge-off method of accounting for bad debts or to the reserve method of section 585, in accordance with § 1.593–13.

Example 2. Thrift institution T is eligible to maintain, and does maintain, a reserve for bad debts under section 593 for all of its taxable years before 1992. T's average total assets for 1992 (determined under § 1.585–5(c) are $550 million. In 1992 T does not meet the 60-percent asset test of section 7701(a)(19)(C) and thus is ineligible to maintain a bad debt reserve under section 593. As a result, in 1992 T is a former thrift institution within the meaning of § 1.593–12(b)(1), and 1992 is an ineligibility year. Because T's average total assets for 1992 exceeds $500 million, T is an institution described in § 1.585–5(b)(1)(i). T is also a large institution within the meaning of § 1.593–12(b)(3). Pursuant to § 1.593–12, in 1992 T must change to the specific charge-off method of accounting for bad debts in accordance with § 1.593–13.

Example 3. The facts are the same as in Example 2. In 1994, T satisfies the 60-percent asset test of section 7701(a)(19)(C) and becomes eligible to return, and returns, to the reserve method of section 593 in accordance with § 1.593–14. In 1995, T once again does not meet the 60-percent assets test of section 7701(a)(19)(C). Therefore, 1995 is also an ineligibility year. T's average total assets for 1995 are $480 million. Although T's average total assets in 1995 do not exceed $500 million, T is a large institution because its average total assets exceeded $500 million in 1992, a year in which T was a former thrift institution. As a result, in 1995 T must change to the specific charge-off method of accounting for bad debts in accordance with § 1.593–13.

§ 1.593–13 Changes by former thrift institutions from the reserve method of section 593.

(a) *Procedure for change—(1) In general.* This section sets forth the procedure that a former thrift institution must follow in changing, in an ineligibility year, from the reserve method of section 593. Such a change is a change in accounting method under section 446, and an adjustment is required pursuant to section 481(a). Except in the case of a request for retroactive application under § 1.593–12(c)(2), if a former thrift institution complies with this section in changing from the reserve method of section 593, the change will be treated as made with the consent of the Commissioner. Paragraph (b) of this section contains rules for filing the required application for a change in accounting method; paragraph (c) of this section contains rules for changing to the specific charge-off method of accounting for bad debts; paragraph (d) of this section contains rules for changing to the reserve method of section 585; and paragraph (e) of this section contains rules for making an election to net section 481(a) adjustments.

(2) *Former thrift institutions under audit.* This paragraph (a)(2) applies to a former thrift institution that meets the following two conditions: At the time it files the application form required by paragraph (b) of this section, the institution is before an examining agent, an appeals office, or any federal court regarding its federal income tax return for any taxable year; and, second, the institution's current ineligibility year is not the first taxable year in which the institution has become ineligible to maintain a reserve under section 593. In order to use the procedures for change provided by this section, an institution to which this paragraph (a)(2) applies must obtain a statement from the examining agent, appeals officer, or counsel for the government that there is

no objection to the use of this procedure. Ordinarily there will be no such objection unless the change in accounting method under this section affects, or is affected by, resolution of the audit, appeal, or court proceeding. The institution must attach the statement to its application form filed in accordance with paragraph (b) of this section. If an institution to which this paragraph (a)(2) applies does not obtain the required statement, the institution must comply with the requirements of § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder) to obtain the Commissioner's consent to change from the reserve method of section 593 in the ineligibility year. For purposes of this paragraph (a)(2), an institution is considered before an examining agent regarding a return from the time a representative of the Internal Revenue Service contacts the institution in any manner to schedule an examination of the return, until the expiration of the period during which the institution must respond to the thirty-day letter that accompanies the examination report.

(b) *Requirement to file Form 3115.* In order to change its method of accounting for bad debts under this section, an institution must file a completed Form 3115 (Application for Change in Accounting Method). See § 1.446–1(e)(3)(i). The form must explain the computation of the institution's new reserve balance (if any), the computation of the institution's section 481(a) adjustment (if any), and the expected time and manner of taking the adjustment into account. The following words must be typed or legibly printed at the top of page 1 of the form: "Automatic Change from Section 593 Reserve Method under § 1.593–13." The original of the completed form must be filed by attaching it to the institution's timely filed (taking extensions into account) original federal income tax return for the ineligibility year.

(c) *Change to the specific charge-off method*—(1) *In general.* A former thrift institution that changes to the specific charge-off method of accounting for bad debts may not deduct, for the ineligibility year or any subsequent taxable year in which it remains on the specific charge-off method, any amount for an addition to a reserve for bad debts. However, for these years, an institution (other than an institution that elects the cut-off method of change under paragraph (c)(4) of this section) may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part. An institution that elects the cut-off method of change under paragraph (c)(4) of this section may deduct amounts under section 166(a) only as allowed by § 1.585–7. An institution that is a large institution (within the meaning of § 1.593–12(b)(3)), must apply the rules of paragraph (c)(2), (c)(3) or (c)(4) of this section. An institution that is not a large institution must apply the rules of paragraph (c)(2) of this section on a change to the specific charge-off method.

(2) *Standard method of change*—(i) *Restatement of reserve to zero.* A former thrift institution that changes to the specific charge-off method must restate the amount of its reserve for bad debts to zero as of the first day of the ineligibility year.

(ii) *Amount of section 481(a) adjustment.* The amount of the former thrift institution's section 481(a) adjustment is the amount of the institution's reserve for bad debts, determined under section 593, as of the close of the taxable year that immediately precedes the ineligibility year. For this purpose, an institution's bad debt reserve includes its reserve for losses on qualifying real property loans, its reserve for losses on nonqualifying loans, and its supplemental reserve for losses on loans. Since the change from the reserve method of section 593 is treated as initiated by the institution, the amount of its section 481(a) adjustment is not reduced by amounts attributable to taxable years beginning in 1952 or 1953.

(iii) *Inclusion in income*—(A) *In general.* The former thrift institution must include the amount of its section 481(a) adjustment in income ratably over 6 taxable years, beginning in the ineligibility year. However, if the institution has been in existence for less than 6 taxable years (as of the first day of the ineligibility year), the amount of its section 481(a) adjustment must be included in income ratably over the number of taxable years it has been in existence. For this purpose, an institution's taxable years of existence include those of any corporation from which the institution acquired loan assets in a transaction to which section 381(a) applies.

(B) *Cessation of business.* If the former thrift institution ceases to engage in the business of investing in loans, the institution must include in income any remaining amount of its section 481(a) adjustment in the taxable year in which this cessation occurs. For this purpose, a transaction to which section 381(a) applies does not, by itself, cause an institution to be treated as having ceased to engage in the business of investing in loans. The successor corporation in a section 381(a) transaction generally takes into account any remaining section 481(a) adjustment as though it were the acquired corporation. If the successor corporation ceases to engage in the business of investing in loans, it must include in income any remaining adjustment in the taxable year in which this cessation occurs.

(3) *Alternative recapture method of change*—(i) *In general.* In lieu of applying the rules of paragraph (c)(2) or (c)(4) of this section, a large former thrift institution may elect to apply the rules of this paragraph (c)(3). This election must be made by clearly stating on the institution's Form 3115, completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is electing the recapture method of change under § 1.593–13(c)(3).

(ii) *Restatement of reserve to zero.* A former thrift institution that elects to apply the rules of this paragraph (c)(3) must restate the amount of its reserve for bad debts to zero as of the first day of the ineligibility year.

(iii) *Amount and portions of section 481(a) adjustment.* The amount of the former thrift institution's section 481(a) adjustment is the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section). The "section 585 portion" of this adjustment equals the amount to which the institution's reserve would be restated if it were restated under paragraph (c)(4)(ii) of this section as of the first day of the ineligibility year. The remainder, if any, of the institution's section 481(a) adjustment is the "section 593 portion" of the adjustment.

(iv) *Inclusion in income.* The former thrift institution must take the section 593 portion, if any, of its section 481(a) adjustment into account in the manner provided by paragraph (c)(2)(iii) of this section. Notwithstanding the last sentence of § 1.585–5(a), the rules of section 585(c)(3) and § 1.585–6 (which provide a recapture method of change) apply with respect to the section 585 portion of the institution's section 481(a) adjustment. The institution must comply with all relevant rules of § 1.585–8 regarding the making and revoking of elections under § 1.585–6. For purposes of applying §§ 1.585–6 and 1.585–8, an institution's ineligibility year is treated as its disqualification year.

(4) *Alternative cut-off method of change*—(i) *In general.* In lieu of applying the rules of paragraph (c)(2) or

(c)(3) of this section, a large former thrift institution may elect to apply the rules of this paragraph (c)(4). This election must be made by clearly stating on the institution's Form 3115, completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is electing the cut-off method of change under § 1.593–13(c)(4).

(ii) *Restatement of reserve to section 585 level.* A former thrift institution that elects to apply the rules of this paragraph (c)(4) must restate the amount of its reserve for bad debts as of the first day of the ineligibility year. The restated balance of the reserve is the institution's 6-year moving average amount (determined by applying § 1.585–2(c)(1)(ii) for the taxable year immediately preceding the ineligibility year) or, if less, the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section).

(iii) *Section 481(a) adjustment.* The amount of the institution's section 481(a) adjustment, if any, is the amount by which the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section), exceeds the amount to which the institution's reserve is restated under paragraph (c)(4)(ii) of this section. The institution must take the amount of the section 481(a) adjustment into account in the manner provided by paragraph (c)(2)(iii) of this section.

(iv) *Treatment of restated reserve.* Notwithstanding the last sentence of § 1.585–5(a), the rules of section 585(c)(4) and § 1.585–7 (which provide a cut-off method of change) apply with respect to the former thrift institution's restated reserve. For purposes of applying § 1.585–7, an institution's ineligibility year is treated as its disqualification year, and any loan that the institution held on the last day of the taxable year immediately preceding its ineligibility year is treated as a pre-disqualification loan.

(5) *Example.* The following example illustrates the principles of this paragraph (c):

Example 1. Thrift institution T, a calendar year taxpayer, is an institution to which § 1.593–12 applies. T is a large institution within the meaning of § 1593–12(b)(3), and its ineligibility year is 1992. T has been in existence for more than 6 years as of the beginning of 1992, and no portion of a section 481(a) adjustment relating to T's method of accounting for bad debts remains outstanding at the beginning of 1992. Because T is a large institution in its ineligibility year, T must change to the specific charge-off method of accounting for bad debts in 1992. The balance of T's reserve at the end of 1991 is $600,000. T's 6-year moving average amount, determined in accordance with § 1.593–13(c)(4)(ii) for 1991, is $240,000.

(i) T does not elect an alternative treatment of its reserve under § 1.593–13(c)(3) or § 1.593–13(c)(4). Thus, pursuant to § 1.593–13(c)(2)(i), T must restate its bad debt reserve to zero as of January 1, 1992. Pursuant to § 1.593–13(c)(2) (ii) and (iii), the amount of T's section 481(a) adjustment is $600,000, and T must include this amount in income ratably over 6 taxable years, beginning in 1992. Thus, T includes $100,000 in income in each of years 1992 through 1997. In 1992 and later years, T deducts amounts allowed under section 166(a) for specific debts that become worthless in whole or in part.

(ii) Instead of the standard method, T elects the recapture method under § 1.593–13(c)(3). Pursuant to § 1.593–13(c)(3)(ii), T must restate its bad debt reserve to zero as of January 1, 1992. Pursuant to § 1.593–13(c)(3)(iii), the amount of T's section 481(a) adjustment is $600,000; the section 585 portion of this adjustment is $240,000, and the section 593 portion is $360,000 ($600,000–$240,000). Pursuant to § 1.593–13(c)(3)(iv), T must include $360,000 in income ratably over 6 taxable years, beginning in 1992. In addition, pursuant to § 1.593–13(c)(3)(iv), T must comply with the recapture method of section 585(c)(3) and § 1.585–6 with respect to the section 585 portion of its section 481(a) adjustment ($240,000). T is not financially troubled within the meaning of § 1.585–6(d)(3), and it does not make the election provided in § 1.585–6(b)(2). Therefore, T must include $240,000 in income over 4 years, beginning in 1992, in the portions prescribed by § 1.585–6(b)(1).

(iii) Instead of the standard or recapture method, T elects the cut-off method under § 1.593–13(c)(4). Pursuant to § 1.593–13(c)(4)(ii), T must restate its bad debt reserve to $240,000 as of January 1, 1992. (See § 1.593–13(d)(5) for an example illustrating the principles of restating the reserve.) Pursuant to § 1.593–13(c)(4)(iii), the amount of T's section 481(a) adjustment is $360,000 ($600,000–$240,000), and T must include this amount in income ratably over 6 taxable years, beginning in 1992. Pursuant to § 1.593–13(c)(4)(iv), T must follow the cut-off method of section 585(c)(4) and § 1.585–7 with respect to its restated reserve.

(d) *Change to the reserve method of section 585*—(1) *In general.* This paragraph (d) sets forth rules for changing under this section from the reserve method of section 593 to the reserve method of section 585. A former thrift institution may make this change only if it is not a large institution within the meaning of § 1.593–12(b)(3). An institution that makes this change must restate its reserve for bad debts as provided in paragraph (d)(2) of this section, and it must take into account the amount of its section 481(a) adjustment, if any, as provided in paragraph (d)(3) of this section. An institution that changes to the reserve method of section 585 may, for the ineligibility year and any succeeding taxable year, deduct only amounts allowed under section 585 for additions to the reserve. For purposes of computing these amounts, the institution must determine its base year amount under paragraph (d)(4) of this section. Paragraph (e) of this section provides an election to net section 481(a) adjustments.

(2) *Restatement of reserve to section 585 level.* The former thrift institution must restate the amount of this reserve for bad debts, as of the first day of the ineligibility year, to the amount described in paragraph (c)(4)(ii) of this section (the section 585 level).

(3) *Section 481(a) adjustment.* The amount of the former thrift institution's section 481(a) adjustment, if any, is the amount by which the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section), is greater or less than the amount to which the institution's reserve is restated under paragraph (c)(4)(ii) of this section. The institution must take the amount of the section 481(a) adjustment into account in the manner provided by paragraph (c)(2)(iii) of this section for including amounts of income.

(4) *Base year amount.* For purposes of applying § 1.585–2(c)(1)(iii) to compute additions to the reserve for the ineligibility year and any succeeding taxable year, the balance of the institution's reserve for bad debts as of the close of the base year is the institution's 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for the institution's last taxable year, if any, beginning before 1988. If the institution has no taxable year beginning before 1988, its base year amount is zero.

(5) *Example.* The following example illustrates the principles of this paragraph (d):

Example. Thrift institution T, a calendar year taxpayer, seeks to change under § 1.593–13 to the reserve method of section 585. T's ineligibility year is 1992. T has been in existence for more than 6 years as of the beginning of 1992, and no portion of a section 481(a) adjustment relating to T's method of accounting for bad debts remains outstanding at the beginning of 1992. The balance of T's bad debt reserve at the end of 1991 is $800,000. Pursuant to § 1.593–13(d)(2), T must restate its reserve as of January 1, 1992, to its 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for 1991. T's

bad debts (adjusted for recoveries) and loans outstanding are as follows:

Year	Bad debts	Loans at year-end
1991	$480,000	$50,000,000
1990	420,320	46,000,000
1989	380,000	30,500,000
1988	309,450	32,500,000
1987	210,000	20,000,000
1986	200,230	21,000,000
Total	2,000,000	200,000,000

The ratio of T's total bad debts from 1986 through 1991, to its total loans outstanding during the same period, is 1/100. T had $50 million of loans outstanding at the end of 1991, and 1/100 of this amount is $500,000. Thus, T's 6-year moving average amount as of the end of 1991 is $500,000, and T must restate its reserve to this amount as of January 1, 1992. Pursuant to § 1.593–13(d)(3), the amount of T's section 481(a) adjustment is $300,000 ($800,000–$500,000). Pursuant to § 1.593–13(d)(3), T must include this amount in income ratably over 6 taxable years, beginning in 1992. For 1992 and later years, T may deduct amounts allowed under section 585 for additions to the reserve. For purposes of computing these amounts, pursuant to § 1.592–13(d)(4) T's base year amount is its 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for 1987.

(e) *Election to net section 481(a) adjustments.* If any portion of a section 481(a) adjustment resulting from any prior change in an institution's method of accounting for bad debts remains outstanding at the beginning of the taxable year in which the institution changes under this section from the reserve method of section 593, the institution may elect to net section 481(a) adjustments under the principles of § 1.593–14(d)(4). See *Example 3* in § 1.593–14(d)(6) for an illustration of this provision.

§ 1.593–14 Former thrift institutions that regain eligibility to use the reserve method of section 593.

(a) *Requirement of change*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, this section applies to any institution to which § 1.593–12 applies for an ineligibility year and which becomes eligible, in a later year, to maintain a reserve for bad debts under section 593. An institution may not maintain a reserve under section 585 for any year in which it is eligible to maintain a reserve under section 593. Therefore, if an institution to which this section applies maintains a reserve under section 585, the institution must obtain the Commissioner's consent to change either to the specific charge-off method of accounting for bad debts under section 166, or to the reserve method of section 593, in the year that it regains its eligibility to maintain a reserve under section 593. If an institution to which this section applies uses the specific charge-off method, it may seek the Commissioner's consent to change back to the reserve method of section 593 in any year that it is eligible to use this method. Any such change from the reserve method of section 585 or the specific charge-off method must be made in accordance with this section. Paragraph (b) of this section contains rules for obtaining the Commissioner's consent to the change; paragraph (c) contains rules for changing to the specific charge-off method; and paragraph (d) contains rules for returning to the reserve method of section 593.

(2) *Certain section 381(a) transactions.* This paragraph (a)(2) applies to an institution described in the first sentence of paragraph (a)(1) of this section if the institution regains its eligibility to maintain a reserve under section 593 in a transaction to which section 381(a) applies, and section 381(c)(4) and § 1.381(c)(4)–1 require the institution to change its method of accounting for bad debts because parties to the section 381(a) transaction use different methods of accounting for bad debts. If this paragraph (a)(2) applies, section 381(c)(4) and § 1.381(c)(4)–1 determine the method of accounting for bad debts to which the institution must change. However, the principles of this § 1.593–14 determine the manner of effecting the change. The Secretary may prescribe rules for applying the principles of § 1.593–14 in these section 381(a) transactions.

(b) *Consent of Commissioner*—(1) *In general.* An institution must obtain the consent of the Commissioner in order to change its method of accounting for bad debts under this section. To request the Commissioner's consent to a change under this section, an institution must file a completed Form 3115 (Application for Change in Accounting Method). See § 1.446–1(e)(3)(i). The form must explain the computation of the institution's new reserve balance (if any), the computation of the institution's section 481(a) adjustment (if any), and the expected time and manner of taking the adjustment into account. The following words must be typed or legibly printed at the top of page 1 of the form: "Change to Specific Charge-off Method under § 1.593–14" or "Return to Section 593 Reserve Method under § 1.593–14." The original of the completed form must be filed by attaching it to the institution's timely filed (taking extensions into account) original federal income tax return for the taxable year in which the institution seeks to change its method of accounting for bad debts ("year of change"). A copy of the completed form must be filed with the Commissioner of Internal Revenue (CC:IT&A:9), 1111 Constitution Avenue, NW., Washington, DC 20224, by the due date (including extensions) of the institution's original federal income tax return for the year of change.

(2) *Presumption of consent.* An institution may assume that consent to a change under this section has been granted if—

(i) The institution has complied with §§ 1.593–12 and 1.593–13 and this section;

(ii) The Internal Revenue Service does not notify the institution, within 90 days after the due date (including extensions) of the institution's original federal income tax return for the year of change, that consent to the change is denied; and

(iii) The change is either—(A) A change to the reserve method of section 593 and the institution has not changed from this method more than once in the 6 taxable years immediately before the year of change, or

(B) A change from the reserve method of section 585 to the specific charge-off method.

(c) *Change to the specific charge-off method*—(1) *In general.* An institution that changes to the specific charge-off method may not deduct, for the year of change or any succeeding taxable year in which it remains on this method, any amount for an addition to a reserve for bad debts. However, for these years, the institution may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part.

(2) *Treatment of reserve.* In order to change from the reserve method of section 585 to the specific charge-off method, an institution must restate the amount of its reserve for bad debts to zero as of the first day of the year of change. The amount of the institution's section 481(a) adjustment is the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the year of change. The institution must take its section 481(a) adjustment into account as provided in § 1.593–13(c)(2)(iii). In applying § 1.593–13(c)(2)(iii) for this purpose, the year of change is treated as the ineligibility year. If any portion of a section 481(a) adjustment resulting from any prior change in the institution's method of accounting for bad debts remains outstanding at the beginning of the year of change, the institution may elect to net section 481(a) adjustments under the principles of § 1.593–14(d)(4).

(d) *Return to the reserve method of section 593*—(1) *In general.* An institution that changes back to the reserve method of section 593 must establish or restate the amount of its reserve for bad debts as provided in paragraph (d)(2) of this section, and it must take into account the amount of its section 481(a) adjustment, if any, as provided in paragraphs (d)(3) and (d)(4) of this section. The institution may deduct additions to its reserve for bad debts, to the extent allowed by section 593, for the year of change and for succeeding taxable years in which it remains eligible to use the reserve method of section 593. For purposes of computing these additions, an institution that does not make the election allowed by paragraph (d)(2)(ii) of this section must determine its base year amount under § 1.593–13(d)(4).

(2) *Establishing or restating reserve to section 593 level*—(i) *In general.* In order to change back to the reserve method of section 593, an institution must establish or restate the amount of its reserve for bad debts as of the first day of the year of change. The initial or restated balance of the reserve is the amount determined under paragraph (d)(2)(i) (A), (B) or (C) of this section (but not less than the amount determined under paragraph (d)(2)(i)(A) of this section). For rules on allocating a reserve balance determined under paragraph (d)(2)(i) (A) or (B) of this section, see paragraph (d)(2)(iii) of this section.

(A) *Experience method balance.* The amount determined under this paragraph (d)(2)(i)(A) is the institution's 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for the taxable year immediately preceding the year of change.

(B) *Percentage of taxable income method balance.* The amount determined under this paragraph (d)(2)(i)(B) is the amount that the institution's reserve would have been on the first day of the year of change if the institution had maintained a reserve consistently under the percentage of taxable income method of section 593(b)(2), applying section 593(b)(2) as it is in effect on that first day. For this purpose, section 593(b)(2) is applied without regard to the reduction described in section 593(b)(2)(B) and without regard to the limits of sections 593(b)(1)(B)(ii) and 593(b)(2)(C). In determining the amount under this paragraph (d)(2)(i)(B), an institution may take into account all of its taxable years of existence or any number of its most recent consecutive taxable years. For this purpose, an institution's taxable years of existence include those of any corporation from which the institution acquired loan assets in a transaction to which section 381(a) applies.

(C) *Safe harbor balance.* The amount determined under this paragraph (d)(2)(i)(C) is—

(*1*) With regard to the institution's reserve for losses on nonqualifying loans, the institution's 6-year moving average amount for nonqualifying loans (determined by applying § 1.585–2(c)(1)(ii) with respect to nonqualifying loans for the taxable year immediately preceding the year of change), and

(*2*) With regard to the institution's reserve for losses on qualifying real property loans, the sum of—

(*i*) The amount that equals 25 percent of the balance of the institution's reserve under section 593 for losses on qualifying real property loans at the end of the institution's last taxable year beginning before January 1, 1987, and

(*ii*) The amount determined under paragraph (d)(2)(i)(B) of this section with respect to all succeeding taxable years (taking into account the reduction described in section 593(b)(2)(B)).

(ii) *One-year election*—(A) *In general.* This paragraph (d)(2)(ii) applies to any institution that changes from the reserve method of section 593 in an ineligibility year, in accordance with §§ 1.593–12 and 1.593–13, and obtains the Commissioner's consent to change back to this method in the taxable year immediately succeeding the ineligibility year. Except as otherwise provided in paragraph (d)(2)(ii)(B) of this section, an institution to which this paragraph (d)(2)(ii) applies may elect to treat itself in the ineligibility year and the taxable year immediately succeeding the ineligibility year as if it had not been required to change, and had not changed, from the reserve method of section 593 (*i.e.*, as if it had not become ineligible to maintain a reserve under section 593 and had continued to maintain its reserve under section 593). Any election under this paragraph (d)(2)(ii) must be made by the due date (including extensions) of the institution's original federal income tax return for the taxable year immediately succeeding the ineligibility year. To make the election, an institution must—

(*1*) File an amended federal income tax return for the ineligibility year, treating itself as remaining on the reserve method of section 593 in that year;

(*2*) File its original federal income tax return for the taxable year immediately succeeding the ineligibility year, treating itself as having remained on the reserve method of section 593 in the ineligibility year and remaining on that method in the immediately succeeding taxable year; and

(*3*) Clearly state, on its Form 3115 completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is making the one-year election under § 1.593–14(d)(2)(ii).

(B) *Six-year limitation.* If an institution makes the election allowed by paragraph (d)(2)(ii)(A) of this section for an ineligibility year, the institution may not make the same election for any succeeding ineligibility year that is less than 6 taxable years after the ineligibility year for which the election is made.

(iii) *Allocation of reserve.* If an institution determines the initial or restated balance of its reserve under paragraph (d)(2)(i) (A) or (B) of this section, the institution must allocate this balance between a reserve for losses on qualifying real property loans and a reserve for losses on nonqualifying loans. The amount of the reserve balance to be allocated to the reserve for losses on nonqualifying loans is the institution's 6-year moving average amount for nonqualifying loans, determined by applying § 1.585–2(c)(1)(ii) with respect to nonqualifying loans for the taxable year immediately preceding the year of change. The remainder of the reserve balance is allocated to the reserve for losses on qualifying real property loans.

(3) *Section 481(a) adjustment.* The amount of an institution's section 481(a) adjustment, if any, upon changing back to the reserve method of section 593 is the amount by which the institution's initial or restated reserve balance (as determined under paragraph (d)(2)(i) of this section), is greater or less than the institution's reserve balance (if any) as of the close of the taxable year immediately preceding the year of change. The institution must take the amount of the section 481(a) adjustment into account in the manner provided by § 1.593–13(c)(2)(iii) for including amounts in income. For purposes of applying § 1.593–13(c)(2)(iii), the year of change is treated as the ineligibility year.

(4) *Election to net section 481(a) adjustments.*—(i) *In general.* If a portion of a section 481(a) adjustment resulting from a prior change in the institution's method of accounting for bad debts remains outstanding at the beginning of the taxable year in which the institution changes under § 1.593–13 from the reserve method of section 593 or changes under this section to either the specific charge-off method or the reserve

method of section 593, the institution may elect to net section 481(a) adjustments under the rules of this paragraph (d)(4) for the taxable year of the change to or from the reserve method of section 593. Any election to net section 481(a) adjustments under this paragraph (d)(4) must be made by clearly stating, on the institution's Form 3115, completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is electing to net section 481(a) adjustments under § 1.593–14(d)(4). See paragraph (d)(5) of this section for rules that apply in some cases if an election to net section 481(a) adjustments is not made.

(ii) *Consistency in netting.* This paragraph (d)(4)(ii) applies if an institution nets section 481(a) adjustments under this paragraph (d)(4) for a taxable year and any portion of the resulting net section 481(a) adjustment remains outstanding at the beginning of any succeeding taxable year in which the institution changes its method of accounting for bad debts. If the change in the succeeding taxable year is a change under this section of § 1.593–13, the institution must net section 481(a) adjustments under this paragraph (d)(4) for the succeeding taxable year. If the change in the succeeding taxable year is not a change under this section or § 1.593–13, the Commissioner may require the institution to net section 481(a) adjustments under the principles of this paragraph (d)(4) for the succeeding taxable year.

(iii) *Amount of net section 481(a) adjustment.* To determine the amount of a net section 481(a) adjustment, an institution must combine the amount of its current section 481(a) adjustment with any outstanding portion of a section 481(a) adjustment resulting from any prior change in the institution's method of accounting for bad debts. To combine these amounts, the institution must add the outstanding amounts of any section 481(a) adjustments that are to be included in income ("positive" adjustments) and subtract the outstanding amounts of any adjustments that are to be deducted from income ("negative" adjustments). The remainder (whether positive or negative) is the amount of the institution's net section 481(a) adjustment.

(iv) *Deducting a negative net section 481(a) adjustment.* If the institution is returning to the reserve method of section 593 in accordance with § 1.593–14 and the institution's net section 481(a) adjustment is negative, the institution must deduct this amount in the manner provided by § 1.593–13(c)(2)(iii) for including amounts in income. For purposes of applying § 1.593–13(c)(2)(iii), the year of change is treated as the ineligibility year. If the institution is changing from the reserve method of section 593 in accordance with § 1.593–13 and the institution's net section 481(a) adjustment is negative, the institution must deduct this amount ratably over the remainder of the period originally prescribed for deducting the amount of the most recent negative section 481(a) adjustment resulting from a change in the institution's method of accounting for bad debts.

(v) *Including in income a positive net section 481(a) adjustment.* If the institution is returning to the reserve method of section 593 in accordance with § 1.593–14 and the amount of the institution's net section 481(a) adjustment is positive, the institution must include this amount in income ratably over the remainder of the period originally prescribed for including the amount of the most recent positive section 481(a) adjustment resulting from a change in the institution's method of accounting for bad debts. If this most recent positive adjustment resulted from the institution's use of the recapture method of § 1.585–6 (either pursuant to § 1.593–13(c)(3)(iv) or otherwise), the period originally prescribed for including the amount of this adjustment is considered to be the longer of: the period originally prescribed by § 1.593–13(c)(3)(iv) for including the section 593 portion of this adjustment; or the 4-year period originally prescribed by § 1.585–6(b) for including this adjustment (determined without regard to section 585(c)(3)(B) and § 1.585–6(d) for the taxable year in which the institution changes back to the reserve method of section 593 and subsequent taxable years). If the institution is changing from the reserve method of section 593 in accordance with § 1.593–13 and the institution's net section 481(a) adjustment is positive, the institution must include this amount in income in the manner provided by § 1.593–13(c)(2)(iii). For purposes of applying § 1.593–13(c)(2)(iii), the year of change is treated as the ineligibility year.

(5) *Treatment of prior section 481(a) adjustment without netting.* This paragraph (d)(5) applies to an institution that does not elect to net section 481(a) adjustments under paragraph (d)(4) of this section if some portion of a section 481(a) adjustment resulting from a prior change in the institution's method of accounting for bad debts remains outstanding at the beginning of the taxable year in which the institution changes back under this section to the reserve method of section 593. An institution to which this paragraph (d)(5) applies must take the outstanding portion of any such prior section 481(a) adjustment into account as originally prescribed. However, if a prior adjustment resulted from the institution's use of the recapture method of § 1.585–6 (either pursuant to § 1.593–13(c)(3)(iv) or otherwise), the institution must include the outstanding portion of the adjustment in income ratably over the remainder of the period provided in the second sentence of paragraph (d)(4)(v) of this section.

6. *Examples.* For purposes of the examples in this section, the thrift institution is a calendar year taxpayer, has been in existence for more than 6 years, and no portion of a section 481(a) adjustment relating to the thrift's method of accounting for bad debts remains outstanding at the end of 1991. The following examples illustrate the principles of this paragraph (d):

Example 1. (i) In 1992 T changes under § 1.593–13 from the reserve method of section 593 to the specific charge-off method. Pursuant to § 1.593–13(c)(2), in 1992 R restates its bad debt reserve to zero, determines the amount of a section 481(a) adjustment, and begins to include this amount in income ratably over 6 taxable years. In 1994 T becomes eligible to return to the reserve method of section 593 and, in accordance with § 1.593–14(b), obtains the Commissioner's consent to change. Because T restated its reserve to zero when it changed to the specific charge-off method, T must establish a new reserve for bad debts as of January 1, 1994. Pursuant to § 1.593–14(d)(2)(i)(B), T chooses to establish its reserve on the basis of the percentage of taxable income method of section 593(b)(2), as that section applies on January 1, 1994. For each of its taxable years from 1952 through 1993 (or for any number of its most recent consecutive taxable years), T determines, on the basis of its permanent records, the amount that is 8 percent of its taxable income (as defined in § 1.593–6A(b)(5)) for the year and reduces this amount by the amount of loans (adjusted for recoveries) charged off as worthless during the year. The sum of the remaining amounts is the initial balance of T's reserve under § 1.593–14(d)(2)(i).

(ii) The initial balance of T's reserve under § 1.591–14(d)(2)(i) is $560,000 and is not lower than T's 6-year moving average amount for 1993. When T changed to the specific charge-off method in 1992, the amount of its section 481(a) adjustment under § 1.593–13(c)(2)(ii) was $900,000. Thus, T included $150,000 (⅙ × $900,000) in income in 1992 and $150,000 in 1993, and the unamortized balance of the adjustment at the beginning of 1994 was $600,000 ($900,000 − $300,000). When T returns to the reserve method of section 593 in 1994, the amount of its section 481(a) adjustment under § 1.593–14(d)(3) is the initial balance of its reserve as determined under § 1.593–14(d)(2)(i) ($560,000). T elects to net section

481(a) adjustments under § 1.593–14(d)(4). Pursuant to § 1.593–14(d)(4)(iii), T's net section 481(a) adjustment is $40,000 ($600,000–$560,000). Pursuant to § 1.593–14(d)(4)(v), this amount must be included in income ratably over the remaining portion of the 6-year period originally prescribed for the first section 481(a) adjustment. Thus, T includes in income $10,000 a year in each of years 1994 through 1997.

Example 2. (i) In 1992 T changes from the reserve method of section 593 to the reserve method of section 585 under § 1.593–13(d). In 1995 T becomes eligible to maintain a reserve under section 593; because T is an institution to which section 593 applies, T may no longer maintain a reserve under section 585. Pursuant to § 1.593–14(b), T obtains the Commissioner's consent to return to the reserve method of section 593 in 1995.

(ii) At the end of 1994 the amount of T's bad debt reserve is $200,000, and the unamortized balance of T's section 481(a) adjustment under § 1.593–13(d)(3) is $70,000. T restates its reserve to $300,000 under § 1.593–14(d)(2)(i) as of January 1, 1995. The amount of T's section 481(a) adjustment under § 1.593–14(d)(3) is $100,000 ($300,000–$200,000). T elects to net section 481(a) adjustment under § 1.593–14(d)(4). Pursuant to § 1.593–14(d)(4)(iii), T's net section 4819a) adjustment is minus $30,000 ($70,000–$100,000). Pursuant to § 1.593–14(d)(4)(iv), T deducts $30,000 ratably over 6 years, beginning in 1995.

Example 3. (i) In 1992 T changes under § 1.593–13 from the reserve method of section 593 to the specific charge-off method. Pursuant to § 1.593–13(c)(2), in 1992 T restates its bad debt reserve to zero, determines the amount of a section 481(a) adjustment, and begins to include this amount in income ratably over 6 taxable years. In 1994 T returns to the reserve method of section 593 under § 1.593–14. In connection with this change, T establishes a new bad debt reserve under § 1.593–14(d)(2)(i), determines the amount of a new section 481(a) adjustments under § 1.593–14(d)(4). The amount of T's net section 481(a) adjustment is $40,000 and under § 1.593–14(b)(4)(v) is to be included in income ratably over the 4 taxable years remaining in the period prescribed for including T's first section 481(a) adjustment. Thus, in 1994 T includes $10,000 of this amount in income, and at the beginning of 1995 the unamortized balance of T's net section 481(a) adjustment is $30,000 ($40,000–$10,000).

(ii) In 1995 T again changes under § 1.593–13 to the specific charge-off method. In connection with this change, in 1995 T restates its reserve to zero under § 1.593–13(c)(2)(i) and determines the amount of a section 481(a) adjustment under § 1.593–14(d)(4)(ii), because T elected to net section 481(a) adjustments for its 1994 return to section 593, T also must net section 481(a) adjustments for its 1995 change from section 593. Under the principles of § 1.593–14(d)(4)(iii), the amount of T's new net adjustment is $530,000 ($500,000+$30,000). Under the principles of § 1.593–14(d)(4)(iv), $530,000 must be included in income ratably over 6 taxable years, beginning in 1995.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92–697 Filed 1–10–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[FI–42–90]

RIN 1545–AO69

Bad Debt Reserves of Thirft Institutions; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by section 593 of the Internal Revenue Code.

DATES: The public hearing will be held on Friday, June 5, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, May 18, 1992.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI–42–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that provides guidance for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by Code section 593. The regulations set forth rules on changing from and returning to this method of accounting, and the regulations provide procedures for complying with these rules. These regulations are issued under the authority of Code sections 446 and 481. These regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, May 18, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–698 Filed 1–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

46 CFR Parts 31, 32, 35

[CGD 91–045]

RIN 2115–AE01

Structural and Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Advane notice of proposed rulemaking, extension of comment period.

SUMMARY: On November 1, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (56 FR 56284) soliciting comments on which structural and operational measures should be required for existing tank vessels without double hulls to provide as substantial protection to the environment as is economically and technologically feasible.

DATES: The comment period on the advance notice of proposed rulemaking is extended to January 30, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G–LRA–2/3406) (CGD 91–045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will become part of the public docket for this rulemaking and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Neyhart, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–1), (202) 267–6743, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Pursuant to the Oil Pollution Act of 1990 (OPA 90), the Coast Guard published an ANPRM in the **Federal Register** (56 FR 26517) on November 1, 1991. The Coast Guard is extending the comment period on this ANPRM which solicits comments on which structural and operational measures should be required for existing tank vessels without double hulls to provide as substantial protection to the environment as is economically and technologically feasible. The Coast Guard has received one formal request, out of 14 comments received as of December 20, 1991, for an extension to the comment period. Several other comments have suggested that an extension would be to the interest of both the public and the Coast Guard. Since few substantive comments have been received to date, the Coast Guard considers an extension to the comment period advantageous to this rulemaking to provide additional time for developing the necessary supporting economic data. The Coast Guard strongly encourages comments on all aspects of this rulemaking, especially supporting economic data regarding the different structural and operational measures on both ships and barges over 5,000 gross tons. The Coast Guard can not emphasize enough the importance of comments on both the negative and positive impact of this rulemaking.

Dated: December 23, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard; Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–738 Filed 1–10–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300242; FRL 4000–3]

Sodium Arsenite; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke all tolerances for sodium arsenite (expressed as arsenic trioxide (As_2O_3)). Sodium arsenite, an inorganic arsenical, is classified by EPA as a known human carcinogen. EPA is proposing to revoke tolerances set for residues of sodium arsenite in liver, kidney, fat, meat, and meat by-products of cattle and horses (40 CFR 180.335), resulting from the insecticidal use of sodium arsenite, upon publication of the final rule. EPA is proposing to revoke the interim tolerance for sodium arsenite on grapes (40 CFR 180.319), resulting from the fungicidal use of sodium arsenite, also expressed as As_2O_3, as of June 30, 1994. This proposed action is being taken because EPA canceled the insecticidal use of sodium arsenite in 1988, and Agtrol Chemical Products, the sole registrant of the fungicidal use, has requested voluntary cancellation of its two registrations of products containing sodium arsenite (EPA registration numbers 55146–35 and 55146–25). Elsewhere in this issue of the **Federal Register**, EPA has published a final order canceling these two registrations of sodium arsenite.

DATES: Written comments, identified by the document control number OPP–300242, must be received on or before March 13, 1992.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Lisa Engstrom, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8031.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing to revoke all tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq, for the insecticide and fungicide, sodium arsenite, also expressed as As_2O_3. The insecticidal use of sodium arsenite was canceled in 1988 due to acute toxicity concerns for the general public and chronic concerns for workers who handle the pesticide. No further sale, distribution, or use was allowed after the date of cancellation. The sole registrant of pesticide products containing sodium arsenite as a fungicide, Agtrol Chemical Products, requested voluntary cancellation of the last two sodium arsenite registrations in November 1990. A final order canceling these registrations is published elsewhere in this **Federal Register**.

II. Legal Background

Section 408 of FFDCA authorizes the establishment of tolerances and exemptions from tolerances for residues of pesticide chemicals in or on raw agricultural commodities. Under the Reorganization Plan No.3 of 1970, 4 Stat. 3086, which established EPA, the authority to set tolerances for pesticide chemicals in raw agricultural commodities and processed food under sections 408 and 409 of the FFDCA was transferred from the Food and Drug Administration (FDA) to the EPA. The FDA retains the authority to enforce the tolerance and food additive provisions under this Plan. Without such tolerances, a food containing pesticide residues is "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce and is subject to seizure (21 U.S.C. 346a(a), 348(a)).

III. Regulatory Background

EPA issued a Notice of Rebuttable Presumption Against Registration (hereafter referred to as Special Review)

for the wood preservative and non-wood preservative uses of inorganic arsenicals in the Federal Register of October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7).

A Preliminary Determination (PD 2/3) for certain non-wood preservative uses of these inorganic arsenicals was issued on January 2, 1987 (52 FR 132) proposing to cancel most registrations based on carcinogenicity risks to workers and acute toxicity to the general public. On June 30, 1988, EPA issued a Notice of Intent to Cancel (53 FR 24787) the registrations of the insecticidal use of sodium arsenite. The cancellation of the insecticidal use of sodium arsenite became effective August 1, 1988.

Agtrol Chemical Products, the sole registrant of the last two remaining fungicidal products containing sodium arsenite, requested voluntary cancellation November 13, 1990. A Notice announcing the receipt of the request was published June 19, 1991 (56 FR 28154). There was a comment period of 90 days to allow parties other than the registrant to have the registrations transferred to them or to allow Agtrol to withdraw its request. No responses were received within the comment period and Agtrol did not withdraw its request for voluntary cancellation. Thus, EPA has issued a cancellation order which is published elsewhere in this Federal Register.

IV. Current Proposal

EPA is proposing to revoke tolerances for the insecticidal use of sodium arsenite resulting from dermal application to animals found at 40 CFR 180.335. The tolerances are: 2.7 parts per million (ppm) in the kidney and liver of cattle and horses and 0.7 ppm in the meat, fat, and meat by-products (except kidney and liver) of cattle and horses. The insecticidal use of sodium arsenite use was canceled in 1988. Consequently, ample time has passed to allow legally-treated commodities (i.e., before the 1988 cancellation) to pass through the channels of trade. EPA is proposing to revoke the tolerances for sodium arsenite found at 40 CFR 180.335 immediately upon publication of the final tolerance revocation. Although sodium arsenite insecticide use in the United States is now illegal, sodium arsenite is currently used in other countries. Once the tolerances for sodium arsenite are revoked, it will be unlawful to import into the United States any commodities treated with sodium arsenite.

EPA is also proposing to revoke the interim tolerance of 0.05 ppm for the fungicidal use of sodium arsenite in or on the raw agricultural commodity grapes found at 40 CFR 180.319. Sodium arsenite is applied to dormant grape vines during December and January to control two types of fungal diseases in California only. As outlined in the Cancellation Order accompanying this proposed tolerance revocation, EPA has granted the registrants a 1 year period after the date of cancellation to distribute and sell existing stocks of canceled sodium arsenite fungicide products. Anyone other than the registrant may sell products containing sodium arsenite until stocks have been exhausted. In their letter requesting voluntary cancellation, Agtrol reported that they had approximately 30,000 gallons of stocks ready for the next growing season. Based on average use of approximately 23,000 gallons per year over the past decade, EPA estimates stock depletion could occur over the next two growing seasons. It should be noted that the annual usage given above is an average figure. The amount of sodium arsenite used depends on the extent of disease outbreak: some years require no treatment. Thus, allowing a year for the registrant to sell the remainder of their existing stocks, plus the 2 years assumed for stock depletion, EPA is assuming that the existing sodium arsenite stocks will have been exhausted by January 1994. EPA is proposing to revoke the interim tolerance for sodium arsenite on grapes (40 CFR 180.319) 6 months after the approximate date of last use, or June 1994. This 6 months after last use is intended to allow grapes which were legally treated to pass through the channels of trade. Since inorganic arsenicals have been classified by EPA as known human carcinogens, and there are no longer registrations for products containing sodium arsenite, EPA believes that it is appropriate to propose revocation of the interim tolerance at this time.

Arsenic can occur in foods naturally in the form of organic arsenic. Organic forms of arsenic are not believed to be of concern, as they occur in a form that is readily excreted by humans. Because current analytical methods do not distinguish between organic and inorganic arsenic (sodium arsenite is an inorganic arsenical), testing of untreated commodities may yield low levels of arsenic residues, expressed as As_2O_3. As mentioned above, since sodium arsenite use is expected to cease after January 1994, EPA believes it is appropriate to revoke the tolerances which are set for residues of the pesticide sodium arsenite.

V. Public Comment Procedures

A comment period of 60 days has been provided to allow registrants, affected parties and the public an opportunity to comment on this proposal. EPA will consider pertinent data and information regarding assumptions used in determining the proposed date of revocation (June 30, 1994) when developing the final tolerance revocation.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains sodium arsenite may request, within 60 days after publication of this document in the Federal Register, that this proposal to revoke the sodium arsenite tolerances listed at 40 CFR 180.335 and the interim tolerance at 40 CFR 180.319 be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on this proposal to EPA. Comments must be submitted by March 13, 1992. Comments must bear a notation indicating the document control number, (OPP-300242). Three copies of the comments should be submitted to facilitate the work of the Agency in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in room 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in room 1128 at the address given above.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major

increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

EPA believes there will be little or no economic impact from revocation of these tolerances, primarily because the registrations have been canceled and time has been or will be allowed for treated commodities to pass through the channels of trade.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(m))).

Dated: December 31, 1991.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, part 180 be amended as follows:

PART 180 [AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.319 the table is amended by revising the entry for "sodium arsenite" to read as follows:

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
* *	* *	* *	*
Sodium arsenite	Fungicide	0.05 [1] (Expires 6/30/94)	Grapes
* *	* *	* *	*

§ 180.335 [Removed]

c. Section 180.335 is removed.

[FR Doc. 92-784 Filed 1-10-92; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition to Delist the Red Wolf (Canis rufus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the Lists of Endangered and Threatened Wildlife and Plants. A finding has been made for the red wolf (*Canis rufus*) that substantial information has not been presented to indicate that delisting the species is warranted.

DATES: The finding announced in this notice was made on December 19, 1991. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding this petition may be submitted to the Red Wolf Coordinator, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: V. Gary Henry (704/665-1195) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the petition is found to present the required information, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a finding on a petition to delist the red wolf (*Canis rufus*). The petition, dated August 30, 1991, was submitted by the American Sheep Industry Association and was received by the Service on September 4, 1991.

The petition presents the contention that the red wolf is a wolf/coyote hybrid. The petition references two literature citations to support the discussion of wolf/coyote hybridization.

The petition makes the following three requests:

1. Remove the red wolf from the U.S. Endangered Species List pursuant to Fish and Wildlife regulations 50 CFR 424.11 and section 4 of the Endangered Species Act.

2. Suspend all release programs for the red wolf into the wilds of Alabama, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee until a decision is made on delisting the red wolf.

3. Suspend all Endangered Species Act funding to the red wolf program until a decision is made on delisting the red wolf.

The Service has reviewed the petition, the literature cited in the petition, other available literature and data, and consulted with wolf experts and molecular genetic analysis researchers. After evaluating all the available information, the Service finds that the petition does not present substantial information indicating that the requested actions may be warranted. The following points summarize the reasons for this finding:

1. Neither the submitted data nor other available data provide substantial support for the contention that the red wolf is a wolf/coyote hybrid.

The petition included an attached literature reference (Wayne and Jenks 1991), and the petition text included information from an additional publication that was not attached. The Service has reviewed the references,

along with other data, to determine their content, significance, and relevance to the petitioned action. The Service views the data presented in the petition as a selective presentation of the information contained in the cited references. The petition stated that Nowak (1979) raised serious questions as to whether the red wolf was a species, a subspecies, or a hybrid and concluded that:

> In nearly all measurements and other features in which *C. rufus* differs from *C. lupus* the former approaches *C. latrans.* Indeed, available specimens of the red wolf almost bridge the morphological gap between the proximal extremes of the other two species. Hybrid origin for *C. rufus* thus seems to be one possibility, * * *

This was not a conclusion of Nowak but is found in the Systematic Description of the red wolf under "Remarks." The remainder of the quoted paragraph states:

> * * * but there are other solutions to the problem. The most reasonable explanation is that *C. rufus* represents a primitive line of wolves that has undergone less change than *C. lupus,* and has thus retained more characters found in the ancestral stock from which both wolves and coyotes arose.

Indeed, the fossil evidence reported by Nowak indicates the red wolf is a separate species. Red wolf fossils up to 750,000 years old pre-date gray wolf fossils in North America and also pre-date coyote presence in the Southeastern United States. Fossils and historical museum specimens of North American *Canis* can be sorted into three distinct groups corresponding to the three species (gray wolf, red wolf, coyote) with no gradations between the groups that would be expected if the red wolf were a hybrid form.

Nowak (Service, personal communication, 1991) elaborates as follows:

> * * * the earliest large series of museum specimens from southeastern North America, taken about 1890–1930, do not show the overall blending of gray wolf, red wolf, and coyote that would be expected if the red wolf had originated a hybrid. Complete blending is restricted to central Texas and even there is limited to red wolf and coyote; the gray wolf is present in the same area but is easily distinguishable and not part of the hybridization process (see pages 41–43 of my paper). Elsewhere, the red wolf and coyote are sympatric or in close proximity, with hybrid individuals having appeared at but a few localities.
>
> It has been said that since the red wolf is in most respects morphologically intermediate to the gray wolf and coyote, it must have resulted from hybridization between the two. This point is meaningless. In the family Canidae, as in many groups of animals, there is a morphological progression of species, there being numerous cases in which one species or population may seem to fall between two others. Rather than hybridization, such a situation probably indicates evolutionary stages. In this regard, I think the red wolf represents a stage that developed after the coyote but before the gray wolf; it thus would be expected to be intermediate to the other two. There are other small wolves in southern Eurasia, and they also are in some respects morphometrically intermediate to North American gray wolves and coyotes, but of course there are no coyotes in that region.

Parker (1989) summarized red wolf taxonomy beginning with the first description of the red wolf in Florida by Bartram (1791), based on observations made in 1774. By contrast, the coyote, whose distinctiveness is unquestioned, was not named until 1823, based on observations made in 1819 (Young and Jackson 1951). The first publication of a valid scientific name was by Audubon and Bachman (1851); they described two varieties of wolves in the Southeast that were structurally different from other wolves and described the coyote as a full species uniquely different from wolves. Bangs (1898) stated that the Florida wolf should be elevated to full species level; Miller (1912) named it *Canis floridanus.* Bailey (1905), in the meantime, had elevated the red Texan wolf described by Audubon and Bachman to a full species with the name *Canis rufus.* Goldman (1937, 1944) consigned all wolves of the Southeast to one species—*C. rufus*—and recognized three subspecies—*C. r. rufus* for the small Texas subspecies, *C. r. floridanus* for the eastern subspecies, and *C. r. gregoryi* for the lower Mississippi valley subspecies. Most authors, including Atkins and Dillon (1971), Kurten and Anderson (1980), Elder and Hayden (1977), Ferrell *el al.* (1980), Nowak (1970, 1972, 1979), Paradiso (1968), and Paradiso and Nowak (1971, 1972), accepted species status for the red wolf.

A minority view that the red wolf was a subspecies of the gray wolf was presented by Lawrence and Bossert (1967) based on results from a multiple character analysis of North American *Canis.* The sample included 20 gray wolves, 20 coyotes, 20 domestic dogs (*C. familiaris*) and a small number of red wolves collected before 1920. Paradiso (1968) and Nowak (1979) suggested that the sample size was too small and did not truly represent the great geographic and individual variation of the canids. By contrast, a large sampling of canid skulls by Paradiso and Nowak (1971) and Nowak (1979) concluded that the red wolf is a distinct species.

Until this year there was only one published suggestion of hybrid origin (Mech 1970), and this provided no supporting data. Wayne and Jenks (1991) provide the only data suggesting a hybrid origin, while O'Brien and Mayr (1991) and Gittleman and Pimm (1991) accept the hybrid origin hypothesis of Wayne and Jenks but present no data regarding the issue.

In contrast to Wayne and Jenks' data, several studies and unpublished data contain substantial data as evidence in support of the red wolf as a distinct species. Nowak's (1979) monograph, entitled "North American Quaternary Canis," has already been referenced. Mechanisms that would have produced hybrids throughout the red wolf's historical range are not supported by any published accounts reinterpreting either the fossil evidence or the historical distributions of either the coyote or gray wolf. Ferrell *et al.* (1980) found a unique electrophoretically determined allele (not present in other *Canis*) with a distribution congruent with the geographical distribution of the red wolf, thus suggesting the survival of a gene originating in the red wolf. D.C. Morizot (University of Texas System Cancer Center, personal communication, 1981), one of the coauthors of Ferrell *et al.*, concludes that the red wolf is a separate form which should be recognized as a small wolf that evolved in North America, thus supporting Nowak's (1979) work. Another study, covering the brain of canids, confirmed the distinctiveness of the red wolf in its cerebeller features and concluded that the red wolf is more primitive in several aspects than the other *Canis* species considered (Atkins and Dillon 1971).

The red wolf populations currently existing are descendants of animals carefully selected based on the best morphological and taxonomic information available at that time. Subsequently, preliminary nuclear DNA findings (Ferrell *et al.* 1980) were considered in the selection of breeding pairs. From the fall of 1973 to July 1980, over 400 wild canids from the last remaining range of the species in southeastern Texas and southwestern Louisiana were examined through the recovery program. Of that number, only 43 were admitted to the breeding/certification program as probable red wolves. Final proof of the genetic integrity of the animals was determined through the captive-breeding process and resulted in only 14 animals becoming the founding stock of the red wolves existing today (Service 1990). Nowak (personal communication, 1991) recently carried out a canonical discriminant analysis of measurements of relevant skulls, including coyotes, gray wolves, pre-1940 red wolves, and founders of the existing red wolf

population and their descendants utilized in the recovery program. Results show the three species—coyote, red wolf, and gray wolf—to be distant from one another. The founders of the existing red wolf population and their descendants are statistically near the original red wolf; i.e., they are breeding true, with no detectable hybridization. Visual observations of phenotype also confirm this conclusion.

Behaviorally and ecologically the red wolf differs from Southeastern coyotes. McCarley (1977) found consistent differences between the vocalization of red wolves and coyotes. Riley and McBride (1972) and Shaw (1975) noted behavioral and ecological differences between red wolves and coyotes after studying free-ranging populations in Texas and Louisiana and concluded that *Canis rufus* is a valid taxon.

Preliminary results from the Alligator River National Wildlife Refuge reintroduction shed additional light on red wolf behavior and ecology (Service, unpublished data). Reintroduced red wolves are very social, with most of the animals belonging to packs which occupy territories. It is not unusual for yearling and 2-year-old red wolves to associate with their parents, assist with pup rearing, and restrict movements to their natal home range. Reintroduced red wolves are relatively intolerant of strange conspecifics; intraspecific aggression is an important source of mortality that led to the death of seven wolves. Thus, in terms of sociality, red wolves are similar to gray wolves (Mech 1970). In contrast, coyotes are often more asocial, with animals belonging to breeding pairs or small family groups. Pups often disperse before their second summer. Home ranges of the groups sometimes evince overlap, and intraspecific aggression is not believed to be an important source of mortality (Gier 1975, Andrews and Boggess 1978, Bekoff and Wells 1982, Danner and Smith 1980, Althoff and Gipson 1981, Roy and Dorrance 1985, Windberg *et al.* 1985, Harrison 1986, Gese *et al.* 1989, Person and Hirth 1991).

The ecological role of the red wolf is largely defined by its food habits. Analysis of 1,300 scats indicates that white-tailed deer (*Odocoileus virginianus*) and raccoons (*Procyon lotor*) are the primary year-round food items for reintroduced red wolves (Service, unpublished data). Although some of the deer are probably eaten as carrion, wolf predation of apparently healthy adult deer has been documented. Most raccoons are probably taken as live prey.

In contrast, deer and raccoons are of tertiary or lesser importance to coyotes in the Southern States, use of deer tends to be seasonal (greatest during fawning period and hunting season), and adult deer are often eaten as carrion (Korschgen 1957, Fooks 1961, Wilson 1967, Gipson 1974, Meinzer *et al.* 1975, Michaelson and Goertz 1977, Smith and Kennedy 1983, Wooding *et al.* 1984, Lee 1986, Leopold and Krausman 1986, Blanton and Hill 1989, Windberg and Mitchell 1991).

By comparison, gray wolves are essentially large ungulate predators, including very large species (such as elk, moose, and bison), although they will concentrate on smaller ungulates, where available, and will take other medium-sized mammals (such as beaver and Arctic hare) (Mech 1970). Red wolves do not have these very large ungulates available within their current range and may not be capable of predation on such large animals. Therefore, based on food habits, red wolves are most similar to gray wolves in their ecological role but do differ somewhat in the significance of medium-sized mammal prey, such as raccoons.

2. The petition misinterprets recent mitochondrial DNA (mtDNA) data by considering mtDNA to be equivalent to nuclear DNA.

The petition contains a single reference (Wayne and Jenks 1991) that bears directly on hybridization in the red wolf. That reference reported no identifiably unique red wolf mtDNA in present or historical specimens of the red wolf. Their results show only coyote mtDNA in existing red wolves and coyote and gray wolf mtDNA in historical specimens. Based on these results, one hypothesis offered is that the red wolf is a hybrid form resulting from coyote/gray wolf interbreedings. The authors also present the following alternative situations that could account for their results: (a) The red wolf could have been a distinct species with unique mtDNA genotypes that were missed in their survey or had become extinct through genetic drift or (b) the red wolf could have been a Southeastern subspecies of the gray wolf that was morphologically, but not genetically, distinct from other gray wolves.

Wayne (University of California at Los Angeles, *in litt.*, 1991), has provided the following additional statements regarding the petition:

> This summation of our results is misleading and incorrect. We show only that red wolves at some time in their past have bred with coyotes and gray wolves in the wild, such interspecific hybridization is common among closely related vertebrate species and hundreds of 'hybrid zones' have been defined (Barton & Hewitt, 1985, 1989). Our results do not show that all sampled red wolves were a cross between coyotes and gray wolves as implied by the letter. In the text we provide three possible explanations of our data * * * [see previous page]. Our data, however, cannot resolve among the three hypotheses.
>
> Our conclusion in the Nature paper is that the red wolf has hybridized with coyotes and gray wolves. We cannot estimate the frequency or number of interbreeding events from our data and our conclusion does not bear directly on the species status of the red wolf. The interbreeding between red wolves and other canids likely reflected the absence of potential same-species mates due to predator control programs employed by the U.S. government and livestock industry.
>
> I regard statements in this letter as a serious misrepresentation of our results * * *

Refsnider (1990) provided a very thorough discussion of DNA significance in a finding on a previous petition to delist the gray wolf, and that discussion is repeated herein:

> The petition clearly, but erroneously, equates mtDNA with nuclear DNA (the DNA found in the nucleus of cells) and bases its conclusions upon that error. Mitochondrial DNA differs substantially from nuclear DNA in both its function and in its method of inheritance.
>
> Mitochondrial DNA does not occur in the cell nucleus and does not function in the production of observable traits. It codes only for proteins made and used within the mitochondria of individual cells. It does not code for the inherited physical and behavioral characteristics of the organism upon which natural selection can act. It is solely [mostly] nuclear DNA that carries the genetic codes for the physical and behavioral traits of the offspring.
>
> Mitochondrial and nuclear DNA are inherited differently because mtDNA is not located in the cell nucleus. Male sperm are essentially mobile nuclei carrying half of the male's genetic code in the nuclear DNA; sperm carrying no mtDNA. Female eggs are complete female cells, including mtDNA outside the nucleus, and with nuclei containing half of the female's genetic code in the nuclear DNA. At fertilization the hybridization of mtDNA cannot occur because the sperm lacks mtDNA to join with the mtDNA of the egg.
>
> These differences between mtDNA and nuclear DNA have several very significant implications. First, a developing embryo [typically] contains only its mother's mtDNA, none is inherited from its father. In contrast, nuclear DNA is passed on by both parents, and the nuclear DNA carried by an embryo originates equally from both parents. Second, once new mtDNA is introduced into a population, it (or possibly a mutated version of it) will persist indefinitely [or until altered by mutation] as long as that matriline (i.e., an unbroken series of female descendants) exists. The action of natural selection will modify the frequency of organisms having particular physical and behavioral traits; that also will change the frequency of the causative nuclear DNA in a population by

changing the frequency of carriers of the nuclear DNA. However, mtDNA is not phenotypically expressed and is largely unaffected [probably less affected] by natural selection. It can persist in a population despite the total elimination of nuclear DNA that originally came from the same source.

Nuclear and mitochondrial DNA differences mean that mtDNA data cannot be treated like nuclear DNA data when one is studying hybridization. For example, over a number of generations the frequencies of particular types of mtDNA in a population have no reliable correlation with the number of hybridization events, their frequency, or their timing. Further, the existence of a type of mtDNA in a population cannot be used to predict the presence or frequency of nuclear DNA that may have come from the same source.

The cited mtDNA study used recently developed techniques and is the first to look at mtDNA in red wolves, so the results of the study may be subject to further reinterpretation. Thus, the findings should not be viewed as conclusive at this point in time. The data need to be expanded, replicated, and evaluated in additional studies. However, a reasonable interpretation of all the existing DNA data relating to this petition and that is compatible with other lines of existing evidence is as follows:

(1) Interbreeding among all three species of North American *Canis* (gray wolf, red wolf, coyote) has occurred in the past, leading to the exchange of nuclear and mtDNA. The number of hybridization events, their frequency, and their timing is unknown. The Ferrell *et al.* study indicates that the red wolf is a unique species or subspecies separate from the coyote or other gray wolf subspecies.

(2) Due to the maternal inheritance of mtDNA, any coyote-type mtDNA passed on in red wolves from hybridization events is not recombined, or diluted, over time in the recipient red wolf population. Mitochondrial DNA is passed on from a mother to her offspring in its entirety (subject to normal mutation), and its frequency depends solely upon the survival and spread of the matriline in the population. In contrast, any nuclear DNA that is subject to selection and is received from coyotes can be "bred out" by natural or artificial selective pressures over succeeding generations, and this may have happened with the individuals used in the red wolf captive-breeding program. There are no data showing phenotypic, morphological, or behavioral expression of coyote traits in the current red wolf populations. This suggest that female offspring from any past hybridizations were successfully backcrossed with male red wolves, and their offspring did the same. These backcrossings may have produced decreasing proportions of any coyote nuclear DNA in individual wolves, while maintaining the entire mtDNA complement. Thus, any coyote traits coded by nuclear DNA have disappeared from the red wolf population, even though the mtDNA persisted.

(3) The locations and dates of collections for all wild canids examined by Wayne and Jenks were in previously known areas of species overlap and indicate widespread pockets of hybridization among the three *Canis* species in the early twentieth century (about 20 years earlier than indicated by widespread appearance of morphologically intermediate specimens). However, this information has no bearing on the historic genetic makeup of red wolves away from areas of known contact with coyotes and gray wolves prior to 1930. Over half of the red wolf's historic geographical distribution remains unsampled, mostly east of the Mississippi River, where red wolves were largely extirpated by 1900 and where coyotes were absent until the 1970s.

In summary, the mtDNA study (Wayne and Jenks 1991) referenced in the petition supports the hypothesis of past hybridizations between the three *Canis* species. However, mtDNA data do not show the extent of hybridization between wolves and coyotes. Also, the data do not provide evidence of any current coyote influence from nuclear DNA in red wolves, and selective captive breeding provides a likely scenario for the elimination of such coyote nuclear DNA from existing red wolves. The study does not provide any evidence of coyote phenotypic, morphological, or behavioral traits persisting in red wolves.

3. The best scientific and commercial data available support continued listing for the red wolf.

The Service is required to use the best scientific and commercial data available when making a listing/delisting decision. As discussed above, the scientific data supporting hybridization in red wolves currently came from a single study. That study suggests past hybridizations, but provides no support for current hybridization in the existing red wolf populations. The remainder of the relevant scientific data show that historic and current red wolves lack coyote, gray wolf, or hybrid phenotypic and morphological traits.

Reasonable caution, an understanding of the classic scientific method, and the Endangered Species Act itself all argue for a conservative approach in applying new data and methodologies to the delising of endangered and threatened species. The Wayne and Jenks study raises important questions that should stimulate further investigation but should not be considered strongly supportive of a significant change in listing and protection for an endangered and threatened species. The red wolf recovery program funded the Wayne and Jenks study and is currently funding additional work by them on nuclear DNA.

It is incumbent upon the Service to avoid a possible premature and unwarranted removal or relaxation of protection for a listed species. Given the current "state of the art" of DNA analysis and interpretation in wild canids, the Service must adopt a conservative approach in the absence of other substantial data supporting delisting of the red wolf.

It must also be pointed out that possible changes in the taxonomy of the red wolf are unlikely to result in delisting. The Act defines species to include any subspecies and any distinct population segment that interbreeds when mature. Therefore, if the red wolf were determined to be a subspecies of the gray wolf, its endangered status would continue. If the red wolf were determined to be entirely a hybrid, delisting may or may not result, depending on the results of current Service reviews of the species concept and its application to canids. It is significant that Wayne and Jenks (1991) and O'Brien and Mayr (1991), while favoring a hybrid origin for the red wolf, favor continued protection under the Act because of the red wolf's uniqueness as a population.

On the basis of the best scientific information available, the Service finds that this petition does not present substantial information indicating that the action requested may be warranted. The Service recognizes the possibility of past and present hybridization among canids in certain geographic localities and will continue to encourage scientific research in the area. In addition, the Service recognizes that recent advances in molecular genetics have made it difficult to interpret such data in light of the classic biological species concept. However, several different species concepts, including a revised biological species concept, are now dominating taxonomic thinking. These alternative concepts incorporate the idea of limited genetic interchange with other recognized species if there are clear selective pressures working against th. persistence of intermediate types. The Service is currently reviewing and

evaluating possible alternate species concepts, with possible ramifications for the Service's approach to the protection of endangered and threatened species when infrequent interbreeding occurs with other taxa.

Wayne and Jenks (1991) support the continued protection of red wolves. They state:

> Even if the red wolf is entirely a hybrid, it filled the role as top predator throughout its former geographic range and was thus an integral part of the ecosystem. The captive population of red wolves seems to be morphologically and genetically representative of the canid that existed in the southeastern United States, and so its reintroduction there would restore an essential component of the fauna.

O'Brien and Mayr (1991) also support continued protection of the red wolf as the only available descendants of the historically occurring canid in the Southeast.

The debate over the origin and current taxonomic status of the red wolf is not likely to be resolved soon, if ever. One major obstacle to resolving this issue is that there are very few pelts from red wolves east of the Mississippi River prior to 1930, where hybridization with coyotes would have been unlikely based on known distribution at that time. However, the red wolves of today are representative of the canids that roamed the Southeast historically and are morphologically and behaviorally distinct from coyotes and gray wolves. Therefore, there will be no change in emphasis or commitment for recovery of the red wolf as a top predator, whether or not this species' taxonomic position is resolved. The recovery of the red wolf is most important for reestablishing this canid's unique ecological and evolutionary role that has been vacant for some time in ecosystems of the Southeast. This position is supported by Wayne (personal communication, 1991), who states that even if partially a hybrid form, the red wolf's genetic makeup would be difficult to reconstruct by interbreeding gray wolves and coyotes, and, if the captive-breeding program were discontinued, a living representative of the canid that historically occupied the Southeast could not be regenerated.

References Cited

A complete list of all references cited herein is available upon request from the author of this notice at the below address.

Author

This notice was prepared by V. Gary Henry, Red Wolf Coordinator, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665-1195).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 6, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-766 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 678

Shark Fishery of the Atlantic Ocean

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NMFS announces that, acting on behalf of the Secretary of Commerce (Secretary), it has prepared a Fishery Management Plan for Sharks of the Atlantic Ocean (FMP) and is making it available for public review and comment. Written comments are requested from the public.

DATE: Written comments must be received on or before March 9, 1992.

ADDRESSES: *FMP copies:* Copies of the FMP may be obtained from the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (Telephone 813-893-3161). *Comments:* Comments should be sent to Mr. Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910; please mark envelope "Shark FMP Comments", (Telephone 301-713-2334).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The FMP was prepared by NMFS under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Preparation began under section 304(c) of the Magnuson Act, which provides for Secretarial preparation of FMPs under certain circumstances. Final FMP approval and implementation is expected to be under section 304(f) of the Magnuson Act, which requires the Secretary to prepare fishery management plans for highly migratory species of the Atlantic Ocean, including "oceanic sharks."

NMFS prepared a first draft FMP in 1989 and conducted 22 public hearings on it in coastal states bordering the Atlantic Ocean, Gulf of Mexico and Caribbean Sea during November and December 1989. In response to public hearing comments and the comments of the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, NMFS significantly revised the FMP in preparing a second draft FMP. NMFS held eight coastwide public hearings on the second draft FMP in May 1991. Subsequently, changes were made in the FMP and related documents (Draft Environmental Impact Statement (DEIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), etc.) to address the comments received from the public, states, Councils, and others.

NMFS is interested in comments on the FMP, DEIS, RIR, and IRFA and will consider all public comments received in determining the need for additional changes. Proposed regulations to implement the FMP will be published in the **Federal Register** shortly for additional public review and comment.

The FMP proposes management measures to: (1) Establish a fishing year of July 1 through June 30; (2) divide the 39 shark species managed by the FMP into three distinct groups for management and assessment purposes—large coastal, small coastal, and pelagic species; (3) require annual permits for commercial shark fishing vessels; (4) establish annual quotas for commercial landings of large coastal and pelagic species with closures of the commercial fisheries when those quotas are reached; (5) close the commercial fishery for the overfished large coastal species immediately upon FMP implementation through June 1992, at which time the fishery will be reopened; (6) prohibit "finning" (the practice of harvesting sharks for fins alone and discarding the carcass at sea); (7) limit the exvessel sale of sharks harvested from the exclusive economic zone of the Atlantic, Gulf of Mexico, and Caribbean Sea to those caught by federally permitted vessels; (8) establish a minimum size limit for mako sharks; (9) establish recreational bag limits for sharks; (10) require sharks that are not harvested as part of the commercial quota or under the bag limits to be released in a manner ensuring maximum probability of survival; (11) require data

reports from owners/operators of permitted vessels and persons conducting shark fishing tournaments; (12) require permitted vessels to accommodate NMFS-approved observers upon request; (13) authorize the Assistant Administrator for Fisheries, NOAA, to implement or adjust certain management measures in accordance with a specified regulatory procedure and based on recommendations of an "Operation Team" established under the FMP; and (14) reduce the total allowable level of foreign fishing for sharks to zero.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-759 Filed 1-8-92; 11:53 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Annual Capital Expenditures Survey.
Form Number(s): ACE-1, ACE-2.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 24,000 hours.
Number of Respondents: 5,000.
Avg Hours Per Response: 1 hour and 48 minutes.
Needs and Uses: A major concern of economic policymakers is the adequacy of investment in productive plant and equipment. Much of the current data on investment are estimates for broad categories of capital expenditures with very little or no detail about the investing industries. We are proposing a new annual data collection for capital expenditures to provide detail on capital expenditures needed for estimating the national income and product accounts, estimating productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capital expenditures data. We plan first to collect 1991 data in a pilot survey to examine the basic survey design, forms and content, and survey processing system. We will also conduct response analysis designed to detect major errors in the forms and obtain respondents reactions to individual survey items. We will then collect 1992 data in a preliminary survey with an expanded panel in order to further test the processing system and survey design. We will implement a full-scale survey for 1993. This request is for clearance of the pilot survey, the response analysis, and the preliminary survey. We will later submit a request for clearance of the full-scale survey including refinements from the previous efforts.
Affected Public: Businesses or other for-profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, 395-7313.

Agency: Bureau of the Census.
Title: 1992 Census of Mineral Industries.
Form Number(s): MC1001 through MC1471.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 80,060 hours.
Number of Respondents: 20,000.
Avg Hours Per Response: 2 hours 6 minutes—short form; 4 hours 20 minutes—long form.
Needs and Uses: The Census Bureau will conduct the census of mineral industries as part of the 1992 Economic Censuses. The economic censuses are the primary source of facts about the structure and functioning of the Nation's economy. They provide essential information for government, business, and the public. In particular, census results serve as part of the framework for the national accounts, input-output measures, and key economic indexes; furnish sampling frames and benchmarks for economic surveys; and provide detailed, comprehensive information for use in policy making, planning, and program administration. The 1992 Census of Mineral Industries will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of approximately 32,500 business establishments classified in Standard Industrial Classification Division B. This sector is comprised mainly of establishments engaged in metal, nonmetalic and coal mining, and oil and gas extraction.
Affected Public: Businesses or other for-profit organizations; small businesses or organizations.
Frequency: Once every 5 years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, 395-7313.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 7, 1992.
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 92-739 Filed 1-10-92; 8:45 am]
BILLING CODE 3510-07-F

Foreign-Trade Zones Board

[Docket 72-91]

Foreign-Trade Zone 76—Bridgeport, CT; Request for Subzone; Normag, Inc., Plant; Bridgeport, CT

The comment period for the above case, involving a request for subzone status at the steel electric transformer parts plant of Normag, Inc. (56 FR 58354, 11/19/91), is extended to February 21, 1992, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 7, 1992.
John J. DaPonte, Jr.,
Executive Secretary.
[FR Doc. 92-792 Filed 1-10-92; 8:45 am]
BILLING CODE 3510-05-M

[Docket 2-88]

Foreign-Trade Zone 99—Wilmington, DE; Withdrawal of Application for Subzone Status for General Foods Corporation

Notice is hereby given of the withdrawal of the application submitted by the State of Delaware, grantee of FTZ 99, through the Delaware Development Office, requesting authority for subzone status for the food products/sugar processing plant of General Foods Corporation in Dover, Delaware. The

application was filed on January 11, 1988 (53 FR 1809, 1/22/88).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 7, 1992.

John J. DePonte, Jr.,

Executive Secretary.

[FR Doc. 92-793 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-549-807; A-570-814]

Postponement of Financial Antidumping Duty Determinations and Rescheduling of Public Hearings: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China and Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Alley or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377-3773 or (202) 377-0656, respectively.

POSTPONEMENT OF FINAL DETERMINATION: China North Industries Corporation, Jilin Provincial Machinery & Equipment Import & Export Corporation, Liaoning Machinery & Equipment Import & Export Corporation, Lioning Metals & Minerals Import & Export Corporation, Shandong Metals & Minerals Import & Export Corporation, and Shenyang Machinery & Equipment Import & Export Corporation, six of the seven participating respondents in the People's Republic of China 9PRC) proceeding, represent a significant proportion of exports of certain carbon steel buttweld pipe fittings from the PRC to the United States. On December 20, 1991, these responsdents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). On December 23, 1991, the U.S. Fittings Group, the petitioner, opposed respondents' request for postponement on the basis that respondents failed to allege that they account for a significant proportion of exports.

TTU Industrial Corporation Ltd. (TTU), one of two participating respondents in the Thailand proceeding, represents a significant proportion of exports of certain carbon steel buttweld pipe fittings from Thailand to the United States. On December 23, 1991, TTU requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with the Act. On December 31, 1991, Awaji Sangyo Co., Ltd. (Awaji), the second of the two paticipating respondents in this proceeding, requested that the Department postpone the final determination for a period not greater than 30 days from the originally scheduled final determination date.

Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Such is the case with respondents in the PRC proceeding. Regarding the request for a partial postponement in the Thailand proceeding, 19 CFR 353.20(b) allows the Department to issue its final determination at any time prior to 135 days after the date of publication of the preliminary determination. Therefore, we do not need to limit the postponement of the final determination to 30 days from the originally scheduled determination date. Accordingly, we are postponing our final determinations as to whether sales of certain carbon steel butt-weld pipe fittings from the People's Republic of China and Thailand, respectively, have been made at less than fair value until not later than May 11, 1992.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold public hearings to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. We are rescheduling the public hearings announced in the Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 56 FR 66831 (December 26, 1991), and in the Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand, 56 FR 66835 (December 26, 1991). The PRC hearing will be held on April 15, 1992, at 9:30 a.m. at the U.S. Department of Commerce in Room 3708, and the Thailand hearing will be held on April 14, 1992, at 1:30 p.m. at the U.S. Department of Commerce in room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary no later than April 6, 1992, and rebuttal briefs no later than April 10, 1992. Oral presentations will be limited to issues raised in the briefs in accordance with 19 CFR 353.38(b). This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated January 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-794 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-017]

Clear Plate and Float Glass From Japan; Court Decision and Suspension of Liquidation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of court decision and suspension of liquidation.

SUMMARY: On December 13, 1991, the United States Court of International Trade affirmed the International Trade Administration's amended determination upon remand that the Department of Commerce could no longer find that resumption of dumping was unlikely. Based upon this finding, the Department of Commerce should not have revoked the order in 1981. *PPG Industries, Inc.* v. *United States*, No. 81-07-00986, Slip Op. 91-112 (CIT December 13, 1991). If the Court's opinion in this case is not appealed, or is affirmed on appeal, then an antidumping duty order on clear plate and float glass from Japan will be reissued.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F. 2d. 337 (Fed. Cir. 1990), Commerce will order the suspension of liquidation of the subject merchandise.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Philip C. Marchal or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1981, the Department of Commerce (the Department) published its final revocation determination involving clear plate and float glass from Japan. Final Results of Administrative Review and Revocation of the Antidumping Finding on Clear Plate and Float Glass From Japan, 46 FR 32926 (June 25, 1981). This determination was based upon Department of Treasury (Treasury) findings that no sales at less than fair value had occurred for several years prior to February 17, 1977, the date of Treasury's tentative determination to revoke. The petitioners instituted an action challenging the Department's final determination. On December 29, 1988, the Court of International Trade (CIT) issued *PPG Industries* v. *United States*, 12 CIT ——, 702 F. Supp. 914, Slip Op. 88-174 (December 29, 1990), which remanded the determination to the Department, to conduct a review of entries from February 17, 1977 through February 5, 1981, the date of the Department's tentative determination to revoke. Upon remand, the Department concluded that its 1981 revocation was justified because during the period mentioned above there had been no sales at less than fair value. In an unpublished decision, dated January 1, 1991, the CIT remanded the determination to the Department a second time to "determine if more recent data (data from 1988-89) confirm the historical administrative view that resumption of dumping was unlikely and that revocation therefore is in order." *PPG Industries, Inc.* v. *United States*, "Memorandum and Order" at 3, Court No. 81-07-00986 (CIT, January 14, 1991). Upon second remand, the Department examined, pursuant to the CIT's order, the recent information submitted by petitioners and determined that the data do not "confirm the historical administrative view that resumption of dumping was unlikely and that revocation therefore is in order." Final Results of the Second Remand, Court No. 81-07-00986, p. 2 (June 28, 1991), quoting, Memorandum and Order, p.3 (January 14, 1991). This remand was affirmed by the CIT on December 13, 1991, *PPG Industries, Inc.* v. *United States*, No. 81-07-00986, Slip Op. 91-112 (CIT December 13, 1991) (PPG Industries).

Accordingly, absent an appeal, or, if appealed, upon a "conclusive" decision by the Court of Appeals for the Federal Circuit (CAFC), affirming the CIT, an antidumping duty order on clear plate and float glass from Japan will be published effective December 23, 1991.

SUSPENSION OF LIQUIDATION: In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's or the International Trade Commission's respective determinations. Publication of this notice fulfills that obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. Therefore, effective December 23, 1991, the Department is suspending liquidation pending the expiration of the period to appeal or pending a final decision of the CAFC if PPG Industries, Slip Op. 91-112, is appealed.

Date: January 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-795 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-101]

Greige Polyester/Cotton Printcloth From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke.

SUMMARY: On April 25, 1989, the Department of Commerce published the preliminary results of its antidumping duty administrative review and tentative determination to revoke the antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China. The review covers one manufacturer/exporter of this merchandise to the United States and the period September 1, 1987, through August 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. On May 31, 1989, we held a hearing. Subsequently, despite the respondent's claim that no shipments to the United States were made during the period from September 1, 1984, through August 31, 1988, we discovered that the respondent exported two shipments of printcloth to the United States during the period of review. We provided the respondent the opportunity to comment on our findings. We did not receive a timely response concerning these shipments from the respondent. Therefore, we have decided not to revoke the antidumping duty order on printcloth from the People's Republic of China on the basis of two shipments of printcloth imported into the United States from the People's Republic of China during the period of review.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Martha J. Butwin or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-4852.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 17,802) the preliminary results of its antidumping duty administrative and tentative determination to revoke the antidumping duty order or greige polyester/cotton printcloth from the People's Republic of China (PRC) (48 FR 41,614, September 16, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act)

Scope of the Review

Imports covered by this review are shipments of greige polyester/cotton printcloth, other than 80×80 type. Greige polyester/cotton printcloth is unbleached and uncolored printcloth. The term "printcloth" refers to plain woven fabric, not napped, not fancy or figured, of single yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch.

During the review period such merchandise was classifiable under items 326.26 through 326.40 of the Tariff Schedules of the United States of America (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 5210.11.60. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of greige polyester/cotton printcloth from the PRC and the period

September 1, 1987 through August 31, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results and tentative determination to revoke. At the request of the respondent, China National Textiles Import and Export Corporation (Chinatex), and the petitioner, the American Textile Manufacturers Institute, Inc. (ATMI), we held a hearing on May 31, 1989.

Comment 1: The petitioner argues that the tentative determination to revoke violates the Department's policy against issuing revocations on the basis of no shipments.

Department's Position: The Department published its tentative determination to revoke on April 25, 1989. Greige Polyester/Cotton Printcloth from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke, 54 FR 17,802. This determination was published two days prior to the effective date of the revised 1989 regulations of the International Trade Administration. Therefore, the former version of these regulations governed this tentative determination. Departmental practice under the former regulations had been to grant a revocation of an antidumping order on the basis of four years of no shipments of the stated goods. See Final Results of Antidumping Duty; Administrative Review and Revocation in Part; Pressure Sensitive Tape from Italy, 55 FR 6,031–6,032 (February 21, 1990). As a result, the Department was correct to base its tentative revocation upon the belief that Chinatex had not shipped printcloth to the United States for four years. However, we have subsequently discovered evidence that Chinatex did indeed ship two orders of printcloth to the United States during the period of review. Thus, we have determined not to revoke the antidumping duty order on greige printcloth from the PRC.

Comment 2: The petitioner contends that the mere absence of shipments does not support a conclusion that there is no likelihood that sales at less-than-fair-value (LTFV) will be resumed by Chinatex.

Department's Position: We agree that the mere absence of shipments gives no indication whether or not LTFV sales will resume. However, due to the fact that we have determined not to revoke the order on the basis of the two shipments which Chinatex exported to the United States, the question of likelihood of resumption of dumping is moot.

Comment 3: The petitioner argues that Chinatex is likely to resume LTFV sales in the United States based upon the petitioner's LTFV calculations and because the petitioner claims that the PRC has gone from a minor exporter to the largest single exporter of textile products to the United States over the past ten years.

The respondent asserts that there is no likelihood that it will resume sales of printcloth at LTFV in the United States. This assertion is based upon the respondent's assurances to the Department that it will not resume LTFV sales, the respondent's calculations which allegedly demonstrate that Chinatex is able to "comfortably" compete in the United States market without dumping, and the existence of U.S. import quotas on PRC printcloth.

In addition, the respondent argues that the petitioner's calculations predicting the respondent's foreign market value (FMV) and U.S. price if the respondent were to ship printcloth to the U.S. are clearly erroneous.

Department's Position: According to 19 CFR 353.54(a) (1989), before revoking an antidumping duty order the Department must be satisfied that (1) "there is no likelihood of resumption of sales at less than fair value" and must demonstrate that (2) the sales of merchandise subject to an antidumping duty order "are no longer being made at less than fair value."

Both the petitioner and the respondent submitted comments on the Department's tentative determination to revoke the antidumping order. In addition, they each provided cost and factors information to demonstrate that there is or is not a likelihood that the respondent will resume LTFV sales of printcloth in the United States. However, since we have determined not to revoke the order (see Comment 1), these points are moot.

Final Results of the Review

Based on our analysis of these comments, and based on the fact that Chinatex has shipped two orders of greige polyester/cotton printcloth from the PRC during the period of review, we have determined not to revoke the antidumping duty order covering such printcloth from the PRC.

Chinatex did not submit a completed response to the Department's questionnaire because Chinatex claimed that it made no shipments of printcloth during the period of review. The Department subsequently determined that Chinatex made two shipments of printcloth to the United States from the PRC during this review period. The Department gave Chinatex the opportunity to comment on these shipments. Because Chinatex's response was untimely, the Department used as best information available the highest margin from a review during which data concerning the shipment of greige polyester/cotton printcloth from the PRC was provided by Chinatex to the Department.

We have determined that the following margin exists for the period September 1, 1987 through August 31, 1988:

Manufacturer/exporter	Margin/percent
Chinatex	22.4

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 22.4 percent shall be required on all shipments of this merchandise. These deposit requirements are effective for all shipments of greige polyester/cotton printcloth from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1), and 19 CFR 353.22(1990)).

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–796 Filed 1–10–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 911187–1287]

RIN 0693–AA96

A Proposed Federal Information Processing Standard for Integrated Services Digital Network (ISDN)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) for Integrated Services Digital Network (ISDN) is being proposed. This proposed standard defines the generic protocols necessary to establish transparent Integrated Services Digital Network (ISDN) connections among government networks and between government and conformant common carrier networks. This proposed FIPS provides a minimal set of bearer services, and is based on

national standards, international standards, and implementation agreements developed by the North American ISDN Users' Forum (NIU-Forum). Future versions of this proposed FIPS will provide protocols for additional services, teleservices and applications

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, State, and local government users so that their needs can be considered prior to submission of this proposed standard to the Secretary of Commerce for review and approval.

The proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816.

DATES: Comments on this proposed standard must be received on or before April 13, 1992.

ADDRESSES: Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for ISDN, Technology Building, room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Su, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-6194.

Dated: January 7, 1992.

John W. Lyons,

Director

Federal Information Processing Standards Publication _____ Date Announcing the Standard for Integrated Services Digital Network (ISDN)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Integrated Services Digital Network (ISDN) (FIPS PUB _____).

2. *Category of Standard.* Computer-Related Telecommunications Standards.

3. *Explanation.* This publication defines the generic protocols necessary to establish transparent Integrated Services Digital Network (ISDN) connections among government networks and between government and conformant common carrier networks. This FISP provides a minimal set of bearer services, and is based on national standards, international standards, and implementation agreements developed by the North American ISDN Users' Forum (NIU-Forum). Future versions of this FIPS will provide protocols for additional services, teleservices and applications.

This standard supports a range of integrated services including voice, data, image, and video services. This standard is consistent with Federal Information Processing Standard 146-1, Government Open Systems Interconnection Profile (GOSIP), which provides protocols for computer to computer data communications using ISDN as a lower layer network technology.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

6. *Cross Index.* NIST Special Publication 500-195, North American ISDN Users' Forum Agreements on Integrated Services Digital Network (ISDN), September 1991.

7. *Related Documents.* Related documents are listed in the Reference Section of the ISDN document.

8. *Objectives.* The primary objectives of this standard are:

—To achieve interconnection and interoperability of user and network equipment that are acquired from different manufacturers in an open systems environment;

—To reduce the costs of acquiring user equipment for ISDN services;

—To facilitate the use of advanced technology by the Federal Government;

—To stimulate the development of commercial products compatible with ISDN standards.

9. *Specifications.* Integrated Services Digital Network (ISDN) (affixed).

10. *Applicability.* This standard is for use by Federal agencies for the acquisition of ISDN Customer Premise Equipment (CPE), ISDN adaptors, switches, and Private Branch Exchanges (PBX). It is also for use by the Federal Telecommunications System (FTS 2000) in the acquisition of telecommunications services for Federal agencies. This standard can also be used by any organization acquiring ISDN services.

11. *Implementation.* This standard is effective six (6) months after date of publication of final document in the **Federal Register** of its approval by the Secretary of Commerce. This standard shall be cited in solicitations and contracts initiated after the effective date, when the services or products to be acquired provide the specified functionality. Agencies are permitted and encouraged to cite this standard in procurement requests initiated any time after the date of promulgation.

For the indefinite future, agencies will be permitted to buy additional services that are beyond the scope of this standard.

The ISDN Conformance Test working group in the NIU-Forum has developed a set of abstract test suites for selected standards and implementation agreements. Test systems implementing these abstract conformance test suites have been developed, or are being developed by testing organizations. As these test systems are complete, NIST will specify the test systems and testing organizations which are accredited to perform conformance testing for this standard.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the

required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Special Information.* This FIPS encompasses the protocols and implementation agreements for the D channel procedures for the underlying (Layers 1, 2, and 3) ISDN protocols as well as a limited set of other protocols, such as ISDN bearer services, X.25 Packet Services, and Terminal Adaption. Common Channel Signalling—Signalling System #7 protocols are not included.

[FR Doc. 92-798 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 911218-1318]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; Publication of 1991 NVLAP directory (NIST SP 810) Supplement #2.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the second supplement to the 1991 Directory of Accredited Laboratories of the National Voluntary Laboratory Accreditation Program. The supplement lists laboratories accredited as of October 1, 1991. Single copies of the supplement may be obtained by sending a self-addressed mailing label to NVLAP, NIST, Building 411, room A146, Gaithersburg, MD 20899.

Note: One (1) copy of the supplement will automatically be sent to each laboratory enrolled in the NVLAP program.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, room A146, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION: The NVLAP Directory of Accredited Laboratories is published annual pursuant to 7.6(a) of the National Voluntary laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

Dated: January 7, 1992.

John W. Lyons,

Director.

[FR Doc. 92-799 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by The Niantic Dockominium Association from an Objection by the State of Connecticut

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

SUMMARY: On January 10, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from The Niantic Dockominium Association (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Connecticut Department of Environmental Protection (State) to the Appellant's consistency certification that its proposal for a U.S. Army Corps of Engineers permit is consistent with Connecticut's coastal zone management program. Specifically, the Appellant proposes a dredge and fill operation to relocate a section of the presently authorized federal channel in the Niantic River in the Town of East Lyme, County of New London, Connecticut. The Appellant proposed the operation, involving 2,000 cubic yards of fill material, in order to maintain its existing marina structures in their present location, parts of which are said to encroach upon the federal channel.

The CZMA provides that a timely objection by a state to a consistency certification precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). (Section 307(c)(3)(A)). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Brett R. Joseph, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Mr. Arthur J. Rocque, Jr., Director, Coastal Resources Management Division, State of Connecticut, Department of Environmental Protection, 165 Capitol Avenue, Hartford, Connecticut 06106.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State of Connecticut, Department of Environmental Protection and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR FURTHER INFORMATION CONTACT: Brett R. Joseph, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606-4200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: December 31, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-725 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Rescheduled Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Budget Committee has canceled a public teleconference originally scheduled to be held January 7, 1992, at 1:30 p.m., and rescheduled that teleconference for January 14, 1992, at 2 p.m. An agenda was published previously on December 27, 1991, at 56 FR 67065 and remains unchanged.

Members of the public that wish to participate in the teleconference or need more information should contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, room 420, Portland, Oregon 97201, telephone: (503) 326-6352.

Dated: January 7, 1992.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-730 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on the FT-SE 100 share index. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 14, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME FT-SE 100 share index contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 7, 1992.

Gerald Gay,

Director

[FR Doc. 92-700 Filed 1-10-92; 8:45 am]

BILLING CODE 6351-01-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Notice of Funding Deadlines

AGENCY: Commission on National and Community Service.

ACTION: Notice.

SUMMARY: The Commission on National and Community Service, established by the National and Community Service Act of 1990, (Pub. L. 101-610, as amended by Pub. L. 102-10) hereby notifies States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified) that they are eligible to apply for funds under the following National and Community Service Act programs:

Serve-America: For programs sponsored by schools or community-based agencies to involve school-aged youth in service to the community or to involve adult volunteers in schools. Funding is allocated to States according to a formula. $16.9 million is available for this program in fiscal year 1992.

Higher Education Innovative Projects for Community Service: For student community service projects or teacher training in service-learning concepts and skills sponsored by higher education institutions or public agencies working in partnership with those institutions. $5.6 million is available for this program in fiscal year 1992.

American Conservation and Youth Service Corps: For full-time, year-round, or summer conservation corps and youth service corps programs for teenagers and young adults, who may receive education, training, living allowances and scholarships. $22.5 million is available for this program in fiscal year 1992.

National and Community Service: For national service programs that will engage individuals ages 17 and older in full-time or part-time service. Participants receive education or housing benefits upon completion of their term of service.

DATES: This is the schedule for deadlines. In the case of Serve-America and the American Conservation and Youth Service Corps, local applicants

are eligible to apply for funds directly from the Commission only if the State does not apply. Therefore, in order to give local applicants adequate notice of their eligibility to apply directly to the Commission, States are required to notify the Commission of their intent to apply for these two programs by Monday, February 3, 1992 (note: this is a revised and final deadline).

Notice must be made in writing and include:

- Name of the State
- Designated State Lead Agency
- Staff contact person
- Address, phone and fax number of State Lead Agency and contact person
- The specific programs for which the State intends to apply

If the State notifies the Commission that it does not intend to apply for funds under Serve-America or American Conservation and Youth Service Corps, or if the Commission has not received notification from a State by February 3, 1992, the State will be barred from applying for funds under Serve-America or American Conservation and Youth Service Corps. Note also that if a State notifies the Commission that it intends to apply for one or both of these programs and then fails to apply, local applicants in that state will nonetheless be barred from applying to the Commission.

Final grant applications will be due to the Commission on or before 4:30 p.m., Monday, March 23, 1992.

FOR FURTHER INFORMATION CONTACT: The Commission on National and Community Service, National Press Club Building, 529 14th Street, NW., 4th floor, Washington, DC 20045, Phone: (202) 724–0600, Fax: (202) 724–0608.

SUPPLEMENTARY INFORMATION: Proposed regulations to administer this grant-making program were published previously in the **Federal Register** (56 FR 57404, November 8, 1991).

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92–950 Filed 1–9–92; 1:38 pm]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice only.

SUMMARY: The Department of Defense (DOD) is expanding its Defense Transportation Tracking System (DTTS) to track Security Risk Category (SRC) 2 munitions effective 18 December 1991. In conjunction with this expansion, Armed Guard Service is eliminated as a Transportation Protective Service (TPS).

ADDRESSES: Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Irene Rosen, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1089.

SUPPLEMENTARY INFORMATION: The purpose of this article is to provide information on the expansion of the Defense Transportation Tracking System (DTTS).

The military services and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence have approved expansion of the DTTS. The expansion implements a phased plan that will eventually result in the tracking of all DOD Categorized and Uncategorized munitions under Satellite Motor Surveillance (SM).

Accordingly, beginning on 18 December 1991, the DTTS entered the first step of the 3-step expansion plan. On that date, the tracking of SRC–2 Arms, Ammunition and Explosives (AA&E) commenced, adding approximately 5,200 shipments annually to the SM tracking volume.

Immediately upon implementation of the first step (18 December), Armed Guard Surveillance (AG) has ceased to exist as a Transportation Protective Service (TPS). Any armed protection required on motor movements will be provided by DOD.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, ATTN: MT–INNG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–734 Filed 1–10–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the Achievement Levels Committee of the National Assessment Governing Board scheduled for January 9, 1992, at 1100 L Street, NW., suite 7322, Washington, DC, as published in the Federal Register on Friday, December 13, 1991, Vol. 56, No. 240, page 65047. The teleconference meeting has been rescheduled for January 16, 1992 at 11 a.m.

Dated: January 7, 1992.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 92–780 Filed 1–10–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF JUSTICE

Agreement Between the Department of Housing and Urban Development and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions

AGENCY: Department of Education.

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, as amended, section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions, as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401–42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the Department of Housing and Urban Development designates the Department of Education

as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions is delegated:

1. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d to 2000d–4); and

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601–42.613, 29 CFR 1691 1–1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

The Department of Housing and Urban Development assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Department of Housing and Urban Development.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Department of Housing and Urban Development, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue written letters of findings of compliance or of noncompliance that (a) advise the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state or chief executive of the local governmental unit in which the applicant or recipient is located will be notified, if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor or chief executive be given an opportunity to secure compliance by voluntary means. The Department of Education shall promptly provide copies of its letters of findings to the Department of Housing and Urban Development and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. If compliance cannot be voluntarily achieved and the Department of Education does not fund the applicant or recipient, refer the matter to the Department of Housing and Urban Development for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. If compliance cannot be achieved and both the Department of Education and the Department of Housing and Urban Development fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Department of Housing and Urban Development with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Housing and Urban Development of the referral.

9. Notify the Department of Housing and Urban Development and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient.

D. Duties of the Department of Housing and Urban Development

The Department of Housing and Urban Development shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance and training necessary for it to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Department of Housing and Urban Development, the types of assistance provided, compliance information solely in the Department of Housing and Urban Development's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the Department of Housing and Urban Development requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the Department of Housing and Urban Development shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Department of Housing and Urban Development against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in

writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Department of Housing and Urban Development, make the final compliance determination and:

(a) If the Department of Housing and Urban Development wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education whether the Department of Housing and Urban Development will join as a party in the administrative hearing conducted by the Department of Education or will conduct its own administrative hearing.

(b) When the Department of Housing and Urban Development initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Department of Housing and Urban Development conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient. The Department of Housing and Urban Development may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Department of Housing and Urban Development neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights in writing, within 15 days after notification from the Department of Education, that voluntary compliance cannot be achieved.

E. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Department of Housing and Urban Development of any such redelegation prior to its effective date.

F. Effect on Prior Delegation

This agreement supersedes and replaces the title VI delegation agreements effective May 26 and June 22, 1966, between the U.S. Department of Health, Education, and Welfare and the Department of Housing and Urban Development. In addition, this agreement delegates to the Department of Education, the Department of Housing and Urban Development's enforcement authority under section 504 of the Rehabilitation Act of 1973 with respect to educational institutions.

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective 30 days from publication in the Federal Register.

H. Termination

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: March 22, 1991.

Alfred A. DelliBovi,

Deputy Secretary, Department of Housing and Urban Development.

Dated: April 25, 1991.

Lamar Alexander,

Secretary Department of Education.

Dated: December 19, 1991.

John R. Dunne,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 92-788 Filed 1-10-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL91-23-000]

Oklahoma Municipal Power Authority; Oklahoma Gas and Electric Co.; Filing

January 7, 1992.

Take notice that on December 30, 1991, Oklahoma Gas and Electric Company (OG&E) tendered for filing supplementary information related to five Amendatory Agreements dated September 30, 1991, between OG&E and the Oklahoma Municipal Power Authority (OMPA) as part of a Settlement Agreement between OG&E and OMPA.

Copies of the supplementary material have been served on OMPA, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-726 Filed 1-10-92; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Program Opportunity Notice for Biomass Energy Projects Proposed for Development Within the Western Regional Biomass Energy Program Region

AGENCY: Western Area Power Administration, DOE.

ACTION: Program opportunity notice.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), as part of its role in managing the Western Regional Biomass Energy Program (WRBEP), plans to solicit cost-shared proposals for the development, demonstration, and/or commercialization of biomass energy projects that utilize low- or negative-value biomass feedstocks. Proposals may include projects focused on collection, transportation, upgrading, conversion, utilization, and/or marketing of low-value biomass feedstocks for energy use, and may involve efforts related to existing biomass-to-energy projects. Only projects that have progressed beyond the basic research stage will be considered.

Proposals will be solicited by a Program Opportunity Notice (PON) issued by Western. Awards will be made to applicants that propose projects within the WRBEP region and on a cost-shared basis. The WRBEP region consists of the States of Arizona, California, Colorado, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. The selected participants must share at least 20 percent of the cost of the proposed project, and preferably 50 percent or more.

It is anticipated that up to 10 awards will result from the PON solicitation. The maximum DOE contribution is limited to $65,000 per project, except that projects involving cost-sharing by organizations in more than one State may be funded by WRBEP for a larger

amount. Project periods of 1 to 5 years will be considered. Projects involving regional biomass feedstocks or biomass-to-energy projects (i.e., directly involving multi-State feedstocks or projects) are particularly encouraged. Awards will be made based on the results of an evaluation of the technical merits, beneficial effects, business and management, and cost merits of proposals received in response to the PON, as well as program policy factors. Evaluation criteria will be defined as part of the PON. DOE will select the type of award relationship (contract, grant, or cooperative agreement) following the evaluation process. If the selected relationship is a contract, the regulations defined in the Federal Acquisition Regulation and the DOE Acquisition Regulation will be followed. If the selected relationship is expected to be a financial assistance instrument, the DOE Assistance Regulation will be followed. Specifically, 10 CFR part 600 will apply if the intended relationship is expected to be a cooperative agreement or grant.

DATES: Parties who would like to receive a copy of the PON should submit a written request to the contact listed below. All requests for a PON should be submitted by February 12, 1992. All requests should reference solicitation number DE-PN65-92WA09522.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Mail Code A1521, Golden, CO 80401, (303) 231-7709.

Issued at Golden, Colorado, December 30, 1991.

William H. Clagett,

Administrator.

[FR Doc. 92-791 Filed 1-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4092-7]

Notice of Location Change for Meeting on January 27 & 28, 1992 of the Chemical Accident Prevention Subcommittee of the Environmental Measurements and Chemical Accident Prevention Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92-463 (The Federal Advisory Committee Act), EPA gives notice of a change of location for the meeting of the Chemical Accident Prevention Subcommittee of the Environmental Measurements and Chemical Accident Prevention (EM/CAP) Committee. The meeting will convene January 27, from 12 noon to 5 p.m. and January 28 from 9 a.m. to 5 p.m. The location of the meeting has been changed to: Holiday Inn Crowne Plaza National Airport, 300 Army Navy Drive, Arlington, Virginia 22202.

Additional information may be obtained from David Graham at (202) 260-9743, or by written request sent by fax (202) 260-6882.

Dated: January 8, 1992.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 92-944 Filed 1-13-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66146A; FRL 4000-2]

Sodium Arsenite; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Cancellation Order.

SUMMARY: This Notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces the cancellation of the two registrations of products containing sodium arsenite. EPA received a request for voluntary cancellation from the sole registrant of products containing sodium arsenite on November 13, 1990. On June 19, 1991 (56 FR 28154), EPA published receipt of the request and announced a comment period of 90 days to allow any interested party(s) the opportunity to have the registrations transferred to them during that time or to allow the registrant an opportunity to withdraw the request. No parties requested transferral of the registrations and the registrant did not withdraw its request for voluntary cancellation. Thus, EPA is issuing the cancellation order at this time. Elsewhere in this issue of the **Federal Register**, EPA is proposing to revoke the interim tolerance for residues of sodium arsenite in or on grapes.

DATES: The cancellation shall be effective January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-7830.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 13, 1990, Agtrol Chemical Products (hereafter referred to as Agtrol) submitted a letter to EPA requesting voluntary cancellation, pursuant to FIFRA section 6(f), of its two products containing sodium arsenite, Sodium Arsenite Solution #4 (EPA # 55146-35) and Sodium Arsenite Solution #6 (EPA # 55146-25). As the basis for requesting voluntary cancellation, the company concluded that the cost of generating studies required for continued registration, some of which were overdue at the time of the request, did not justify continued registration of their products. In addition, sodium arsenite is currently undergoing a Special Review for carcinogenicity concerns for workers. Sodium arsenite, an inorganic arsenical, is classified as a Group A, or known human carcinogen.

Sodium arsenite is used to control Black Measles and *Phomopsis* cane and leaf spots (*Phomopsis viticola*) on grapes. These diseases, and thus the use of sodium arsenite, occur only in California. The degree of disease outbreak is variable and may not occur every year. Black Measles is caused by infection through pruning wounds. Although there are no alternatives to sodium arsenite for Black Measles control, the disease is not expected to spread significantly in the absence of chemical controls. While grapes affected by Black Measles are worthless for fresh use, some may be crushed for wine. Properly timed applications of captan can adequately control *Phomopsis* cane and leaf spots.

II. Existing Stocks Determination

Included in its voluntary cancellation request, Agtrol requested that it be allowed to sell all stocks until depletion. The company noted it has 30,000 gallons of stock ready for the next growing season, which is on average enough stock to treat crops over two growing seasons. As noted in the June 19, 1991 **Federal Register** Notice, EPA set forth its rationale for not allowing unlimited sale, distribution and use of sodium arsenite by Agtrol. In that same Notice, EPA proposed to allow the registrant to sell and distribute its products containing sodium arsenite for 1 year after the date of cancellation and persons other than the registrant to sell and use products containing sodium arsenite until supplies were exhausted. The Agency concluded that the benefits of sodium arsenite use until stocks have been depleted outweigh the risks. EPA believes exposure, and therefore risk, are not high since California requires several protective measures and since sodium arsenite is applied to dormant grapes vines. EPA received no comments on this proposal. Therefore,

the registrant may sell and distribute stocks until January 13, 1993, and all others may sell, distribute, and use stocks until supplies are exhausted.

III. Conclusion

EPA received a request for voluntary cancellation from Agtrol. Pursuant to FIFRA section 6(f) as amended, a comment period was established to allow any interested party(s) to have the registrations transferred to them. In addition, EPA proposed an existing stocks provision for the registrant of 1 year, and sale and use until stock depletion by all others. No requests for transfer were received and no comments were submitted regarding the voluntary cancellation or the proposed existing stocks provision. Therefore, EPA is issuing a cancellation order for all registrations of products containing sodium arsenite, allowing Agtrol to sell and distribute remaining stock until January 13, 1993, while allowing sale, distribution, and use by all others until all stocks are depleted. Note that while there is no expiration date for sodium arsenite sale, distribution, and use (except by Agtrol), expiration of sodium arsenite tolerances has been proposed for June 1994 in a notice published elsewhere in this issue of the **Federal Register**. Thus, after June 1994 no residues of sodium arsenite may legally be found on grapes.

IV. Cancellation Order

On November 13, 1990, Agtrol Chemical Products, the sole registrant of products containing sodium arsenite in the United States, requested voluntary cancellation of their two products containing sodium arsenite (EPA registration numbers 55146–35 and 55146–25) pursuant to FIFRA section 6(f). I approve the cancellation of these two products and of the existing stocks provision allowing sale and distribution of sodium arsenite products by Agtrol for 1 year, and sale, distribution, and use by all others until all stocks have been depleted. EPA has concluded that the benefits as existing sodium arsenite stocks are being depleted outweigh risks associated with use. For the purposes of this Order, "existing stocks" are defined as any quantity of any of the sodium arsenite products listed above that has been formulated, packaged, and labeled for use and is being held for shipment or release or has been shipped or released into commerce prior to the effective date of this Order. The sale and distribution of existing stocks of the sodium arsenite products listed above by the registrant, Agtrol Chemical Products, is permitted for 1 year from the effective date of this Order. Therefore, all sale and distribution of these products by the registrant is prohibited after January 13, 1993. The sale, distribution, and use of existing stocks of the sodium arsenite products listed above by any person other than the registrant, Agtrol Chemical Products, is permitted until all stocks, other than any stocks remaining in the possession of Agtrol Chemical Products after January 13, 1993 have been depleted. Accordingly, this cancellation order shall become effective January 13, 1992.

Dated: December 31, 1991.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92–785 Filed 1–10–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–51782; FRL 4043–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 39 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92–201, February 9, 1992.

P 92–202, February 3, 1992.

P 92–203, 92–204, 92–206, 92–207, 92–208, February 9, 1992.

P 92–209, 92–210, 92–211, 92–212, 92–213, 92–214, February 11, 1992.

P 92–316, 92–317, 92–318, March 17, 1992.

P 92–319, 92–320, 92–321, March 18, 1992.

P 92–322, 92–323, 92–324, 92–325, 92–326, 92–327, 92–328, 92–329, March 21, 1992.

P 92–330, 92–331, 92–332, 92–333, 92–334, 92–335, 92–336, March 22, 1992.

P 92–337, 92–338, 92–339, 92–340, 92–341, March 24, 1992.

Written comments by:

P 92–201, January 10, 1992.

P 92–202, January 4, 1992.

P 92–203, 92–204, 92–206, 92–207, 92–208, January 10, 1992.

P 92–209, 92–210, 92–211, 92–212, 92–213, 92–214, January 12, 1992.

P 92–316, 92–317, 92–318, February 16, 1992.

P 92–319, 92–320, 92–321, February 17, 1992.

P 92–322, 92–323, 92–324, 92–325, 92–326, 92–327, 92–328, 92–329, February 20, 1992.

P 92–330, 92–331, 92–332, 92–333, 92–334, 92–335, 92–336, February 21, 1992.

P 92–337, 92–338, 92–339, 92–340, 92–341, February 23, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–51782)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92–201

Manufacturer. R.T.Vanderbilt Company,Inc.

Chemical. (G) Calcium alkylarysulfonate.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: moderate species (rabbit).

P 92–202

Manufacturer. Confidential.

Chemical. (G) Alkylaluminoxane compound.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg

species (rabbit). Skin irritation: moderate species (rabbit).

P 92-203

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) Lithium alkylarysulfonate.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: moderate species (rabbit).

P 92-204

Manufacturer. R.T.Vanderbilt Company, Inc.

Chemical. (G) Zinc alkylarylsulfonate.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: moderate species (rabbit).

P 92-206

Manufacturer. Confidential.

Chemical. (G) Deionized acidic.

Use/Production. (G) Intermediate in preparation of surface coating. Prod. range: Confidential.

P 92-207

Manufacturer. Confidential.

Chemical. (G) Dimethylaminoethanol salt of a copolyester of sulfoisophthalic acid.

Use/Production. (G) Surface coating for film. Prod. range: Confidential.

P 92-208

Manufacturer. Confidential.

Chemical. (G) Aqueous aliphatic polyurethane.

Use/Production. (S) Coating. Prod. range: Confidential.

P 92-209

Manufacturer. Confidential.

Chemical. (G) Polydimethyl siloxane resin.

Use/Production. (G) Paint additive. Prod. range: Confidential.

P 92-210

Importer. Confidential.

Chemical. (G) Derivative of bis-triazinylamino-stilbene disulfonic acid.

Use/Import. (G) Floroscent brightner. Import range: Confidential.

P 92-211

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo-substituted naphthalene trisulfonic acid.

Use/Production. (S) Fiber reactive dye for textile. Prod. range: 2,500–10,000 kg/yr.

P 92-212

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo-substituted naphthalene trisulfonic acid.

Use/Production. (S) Fiber reactive dye for textile. Prod. range: 2,500–10,000 kg/yr.

P 92-213

Importer. Reichhold Chemicials, Inc.

Chemical. (G) Polyester polyurethane.

Use/Import. (S) Polyurethane for glass fiber sizing. Import range: Confidential.

P 92-214

Importer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester polyurethane.

Use/Import. (S) Polyurethane for glass fiber sizing. Import range: Confidential.

P 92-316

Importer. BASF Corporation, Fibers Division.

Chemical. (G) Acrylate-acrylonitrile copolymer salt.

Use/Import. (S) Polymer dispersion. Import range: Confidential.

P 92-317

Manufacturer. Confidential.

Chemical. (G) Amine functional epoxy resin.

Use/Production. (S) Coatings. Prod. range: 480,000–2,400,000 kg/yr.

P 92-318

Manufacturer. Confidential.

Chemical. (G) Styrene-acrylic copolymer.

Use/Production. (G) Clear caulk. Prod. range: Confidential.

P 92-319

Manufacturer. Texaco Lubricants Co.

Chemical. (G) Tetraurea grease thickener prepared by the reaction of a diisocyanate with aliphatic amines.

Use/Production. (S) Automotive constant velocity joints. Prod. range: 7,140 kg/yr.

P 92-320

Manufacturer. Confidential.

Chemical. (G) Aromatic imine.

Use/Production. (G) Catalyst for polyurethanes. Prod. range: Confidential.

P 92-321

Importer. Confidential.

Chemical. (G) Aliphatic amine, epoxy adduct.

Use/Import. (S) Internal coating for storage tanks, transport tanks, pipe interiors, and processing equipment. Import range: Confidential.

P 92-322

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-323

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-324

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-325

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-326

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-327

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-328

Manufacturer. Confidential.

Chemical. (G) Trisubstituted hydroquinone.

Use/Production. (S) Organic synthesis intermediate. Prod. range: 1,100–2,200 kg/yr.

P 92-329

Manufacturer. Confidential.

Chemical. (G) Trisubstituted hydroquinone diester.

Use/Production. (G) Contained use-component. Prod. range: 1,500–3,000 kg/yr.

P 92-330

Manufacturer. Confidential.

Chemical. (G) Alkoxyphenol, 4-dihydroalkylpyran, isomer mix.

Use/Production. (G) Fine fragrance component; functional products fragrance component. Prod. range: Confidential.

P 92-331

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-332

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-333

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-334

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-335

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-336

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-337

Manufacturer. Confidential.
Chemical. (G) Polyamine formaldehyde condensate.
Use/Production. (G) Scavenger. Prod. range: Confidential.

P 92-338

Importer. Confidential.
Chemical. (G) Substituted pyrogallol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 92-339

Importer. Confidential.
Chemical. (G) Substituted phenol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 92-340

Importer. Confidential.
Chemical. (G) Substituted resorcinol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 92-341

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (S) Ethane,-1,1,1-trifluoro.
Use/Production. (S) Refrigerant. Prod. range: Confidential.

Dated: January 7, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-786 Filed 1-10-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59929; FRL 4043-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 92-80, January 16, 1992.
Y 92-81, January 22, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-80

Manufacturer. C. J. Osborn, Div. of Suvar Corp.
Chemical. (G) Long oil alkyd.
Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Y 92-81

Manufacturer. Confidential.
Chemical. (G) Modified phthalate polyester resin.
Use/Production. (S) Binder in two component primer. Prod. range: Confidential.

Dated: January 7, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-787 Filed 1-10-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 7, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW; Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3253 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.
Title: Section 74.991, Wireless cable application procedures.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 20 responses; 3.33 hours average burden per response; 67 hours total annual burden.
Needs and Uses: On 9/26/91, the Commission adopted a Second Report and Order, MM Doc. No. 80-54, Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules

Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Section 74.991 requires that a wireless cable application be filed on FCC Form 330 (3060-0062), sections I and V, with a complete FCC Form 494 (3060-0402) appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application, give local public notice in a newspaper. The specific data that must be included in the newspaper publication is contained in § 74.991(c). The data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become Commission licensees and that proposals do not cause interference.

OMB Number: None.
Title: Section 74.986, Involuntary ITFS station modifications.
Action. New collection.
Respondents: State or local governments, businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 60 responses; 5.83 hours average burden per response; 350 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90-54, Amendment of parts 21, 43, 74, 78 and 94 of the Commission s Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Among other things, this Second R&O added § 74.986. Section 74.986 requires that an application for involuntary modification of an ITFS station be filed on FCC Form 330 (3060-0062) but need not fill out section II (legal qualifications). The application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. The data is used by FCC staff to insure that proposals to modify facilities of ITFS licensees/ permittees would provide comparable ITFS service and would otherwise serve the public interest in promoting the MMDS service.

OMB Number: None.
Title: Section 74.990, Use of available instructional television fixed service frequencies by wireless cable entities.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 20 responses; 2 hours average burden per response; 40 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90-54, Amendment of parts 21 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Section 74.990 requires a wireless cable applicant to show that there are no multipoint distribution service (MDS) or multichannel multipoint distribution service (MMDS) channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for The data provided in the showing will be used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonable foreseeable ITFS use.

OMB Number: None.
Title: Section 74.992, Access to channels licensed to wireless cable entities.
Action: New collection.
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 10 responses; 3.83 hours average burden per response; 38 hours total annual burden.
Needs and Uses. On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90-54, Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Section 74.992 requires that requests by ITFS entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330 (3060-0062), sections I, II, III and IV. The application must include a cover letter clearly indicating that the application is for ITSF access to a wireless cable entity's facilities on ITFS channels. The data is used by FCC staff to determine eligibility of an educational institution or entity demanding access for ITFS use on a wireless cable facility.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-745 Filed 1-10-92; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submited the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For furhter information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.
Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 850 responses; 7 hours average burden per response; 5,950 hours total annual burden.
Needs and Uses: On 9/26/91, the Commission adopted a Report and Order, MM Doc. No. 87-267, Review of the Technical Assignment Criteria for the AM Broadcast Service. Among other things this R&O revised §73.37. Section 73.37(d) requires applicants of a new AM broadcast station, or for a major change in an authorized AM

broadcast station as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class B station is proposed, that objectionable interference will not result to an authorized station. Section 73.37(f) requires modifications that would result in a spacing or spacings that fail to meet any of the separations must include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities operating in compliance with all of the above separation distances. The data is used by FCC staff to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Number: None.
Title: Section 74.902, Frequency Assignments.
Form Number: FCC Forms 327 and 330.
Action: New collection.
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 40 responses; 3.63 hours average burden per response; 145 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90-54, Amendment of parts 21 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Among other things, this Second R&O amended §74.902. Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, that the MDS applicant files the appropriate application for suitable alternative spectrum. The affected applications that would be used are the FCC 327 (3060-0050) and the FCC 330 (3060-0062). The data is used by FCC staff to insure that proposals to displace point-to-point facilities of ITFS licensees/permittees would provide comparable ITFS serivce and would otherwise serve the public interest in promoting the MMDS service.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-746 Filed 1-10-92; 8:45 am]
BILLING CODE 6712-01-M

Comments Invited on Lubbock Area Public Safety Plan

January 3, 1992.

The Commission has received the public safety radio communications plan for the Lubbock area (Region 52).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before February 14, 1992 and reply comments on or before March 2, 1992. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987) at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92-1 Lubbock-Public Safety Region 52.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-747 Filed 1-10-92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Seattle, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011033-033.
Title: Port of Seattle/Nippon Yusen Kaisha, Ltd.
Parties:
Port of Seattle
Nippon Yusen Kaisha, Ltd.
Synopsis: This Agreement, filed December 31, 1991, adjusts the term, the premises and the rental amount pursuant to the renegotiation provisions of the basic lease. The new term will be to January 31, 1995.

Agreement No.: 224-200501-001.
Title: Port Authority of New York & New Jersey/Hapag-Lloyd (America) Inc. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Hapag-Lloyd (America) Inc.
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200507-001.
Title: Port Authority of New York & New Jersey/Bermuda Agencies, Ltd. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Bermuda Agencies, Ltd.
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200516-001.
Title: Port Authority of New York & New Jersey/Evergreen International (USA) Co. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Evergreen International (USA) Co.
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200523-001.
Title: Port Authority of New York & New Jersey/Atlantic Container Line Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Atlantic Container Line
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200524-001.
Title: Port Authority of New York & New Jersey/Sea-Land Services, Inc., Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Sea-Land Services, Inc.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200525-001.
Title: Port Authority of New York & New Jersey/Maersk, Inc., Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Maersk, Inc.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200538-001.
Title: Port Authority of New York & New Jersey/Orient Overseas Container Line Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Orient Overseas Container Line

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200539-001.
Title: Port Authority of New York & New Jersey/Gdynia America Lines Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Gdynia America Lines

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200547-001.
Title: Port Authority of New York & New Jersey/Empresa Naviera Santa S.A. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Empresa Naviera Santa S.A.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224-200549-001.
Title: Port Authority of New York & New Jersey/Zim America Israeli Shipping Co., Inc., Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Zim America Israeli Shipping Co., Inc.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-727 Filed 1-10-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration on Developmental Disabilities, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Administration on Developing Disabilities' Basic State Grant Program Performance Report.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Reports Clearance Officer, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Christina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Developmental Disabilities Basic State Grant Program Performance Report.
OMB No.: 0980-0172.
Description: The Developmental Disabilities' Basic State Grant Program Performance Report will be used by each State and territories to prepare and transmit to the Secretary, Department of Health and Human Services, an annual report for the preceding fiscal year of activities and accomplishments under the Basic State Grant program. The information provided in the program performance report will first be used in the preparation of the Secretary's Annual Report to the President, the Congress, and the National Council on Disabilities. Additionally, the information will be used to provide a national perspective on program accomplishments and continuing challenges.
Annual Number of Respondents: 55.
Annual Frequency: 1.
Average Burden Hours Per Response: 88.
Total Burden Hours: 4,840.

Dated: January 6, 1992.

Naomi B. Marr,

Director, Office of Information and Management Systems.

[FR Doc. 92-690 Filed 1-10-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice. Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Family and Youth Services Bureau within the Administration on Children, Youth and Families (ACYF) of the Administration for Children and Families.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, ACF Report Clearance Officer, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Christina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Program Performance Standards-Runaway and Homeless Youth Centers Self-Assessment Instrument.
OMB No.: 0980-0037.
Description: The Program Performance Standards Self-Assessment Instrument is necessary for the Family and Youth Services Bureau Center grantees to assess progress and conformance with program performance standards that have been established by FYSB for these grantees. The Instrument provides useful information related to the internal staff actions and/or external technical assistance required to bring a basic center's service and administrative components into conformance with the Runaway and Homeless Youth Basic Center Program.
Annual Number of Respondents: 369.
Annual Frequency: 1.
Average Burden Hours Per Response: 3.
Total Burden Hours: 1,107.

Dated: January 6, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-691 Filed 1-10-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families Administration on Children, Youth, and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Administration for Children, Youth, and Families' (ACYF) Evaluation of Efforts To Recruit Families And Achieve Adoptive Placement For Waiting Minority Children.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Reports Clearance Officer, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Christina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503.

Information on Document

Title: Evaluation of Efforts to Recruit Families and Achieve Adoptive Placement for Waiting Minority Children.

OMB No..

Description. The Adoption Opportunities Program in the Children's Bureau of the Administration on Children, Youth and Families has invested over $50 million in demonstration projects, many of which focused on recruiting adoptive homes for minority children. Nevertheless, minority children continue to constitute a disproportionate number of children waiting for adoptive homes.

The purpose of this study is to collect information from the adoptive parent applicants through a telephone survey. Information from the survey will be supplemented by descriptive information from the grant files and informal discussions with the grantees. This information from minority adoptive parent applicants will provide ACF with statistical and descriptive information on successful models for the adoption of minority children.

Annual Number of Respondents: 605.

Annual Frequency: 1.

Average Burden Hours Per Response: .33.

Total Burden Hours: 202.

Dated: January 6, 1992.

Naomi B. Marr,

ACF Reports Clearance Officer.

[FR Doc. 92-692 Filed 1-10-92; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Alcohol Abuse and Alcoholism for February 1992.

The initial review groups and the National Advisory Council will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C-20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4375).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting Dates: February 5-7, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center Bethesda, MD 20814.
Open: February 5, 9 a.m.-11 a.m.
Closed: Otherwise.
Contact: Antonio Noronha, Ph.D., rm. 16C-20, Parklawn Bldg., phone (301) 443-4375.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.
Meeting Date: February 6, 1992.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 6, 10:15 a.m.-3 p.m.
Closed: Otherwise.
Contact: James F. Vaughan, rm. 16C-20, Parklawn Bldg., phone (301) 443-4375.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting Dates: February 10-11, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 10, 9 a.m.-10:15 a.m.
Closed: Otherwise.
Contact: Ronald F. Suddendorf, Ph.D., rm. 16C-26, Parklawn Bldg., phone (301) 443-6106.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.
Meeting Dates: February 12-14, 1992.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: February 12, 9 a.m.-10 a.m.
Closed: Otherwise.
Contact: Thomas D. Sevy, M.S.W., rm. 16C-26, Parklawn Bldg., phone (301) 443-6106.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.
Meeting Dates: February 19-21, 1992.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: February 19, 9 a.m.-10 a.m.
Closed: Otherwise.
Contact: Lenore S. Radloff, rm. 16C-26, Parklawn Bldg., phone (301) 443-6106.

Dated: January 7, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-802 Filed 1-10-92; 8:45 am]

BILLING CODE 4160-20-M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for February 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552 (c)(6) and 5 U.S.C. app. 2 10(d).

The Extramural Science Advisory Board will include discussions of NIDA's planning process and future program. This meeting will be open; however, attendance by the public will be limited to space available.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee.
Meeting Date: February 4–7, 1992.
Place: Doubletree Hotel of San Diego, 901 Camino Del Rio South, San Diego, CA 92108.
Open: February 4, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Raquel Crider, Ph.D., room 10–22, Parklawn Building, telephone (301) 443–9042.

Committee Name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 11–13, 1992.
Place: Hyatt Regency Bethesda, Embassy Room, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: February 11, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Gamil Debbas, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 11–14, 1992.
Place: Hyatt Regency Bethesda, Potomac/Patuxent Suite, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: February 11, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Syed Husain, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee.
Meeting Date: February 11–14, 1992.
Place: Hyatt Regency Bethesda, Diplomat/Ambassador Room, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: February 11, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Daniel L. Mintz, room 10–22, Parklawn Building, telephone (301) 443–9042.

Committee Name: Extramural Science Advisory Board, NIDA.
Meeting Date: February 18–19, 1992.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 18–19, 9 a.m. to 5 a.m.
Contact: Jacqueline P. Downing, room 10A–55, Parklawn Building, telephone (301) 443–1056.

Committee Name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 18–20, 1992.
Place: Marriott Suites Alexandria, Salon #3, 801 St. Asaph Street, Alexandria, Virginia 22314.
Open: February 18, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Rita Liu, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Dated: January 7, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-303 Filed 1-10-92; 8:45 am]

BILLING CODE 4160-20-M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for February 1992.

The initial review groups and the National Advisory Mental Health Council will be performing a review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Extramural Science Advisory Board will be discussing Knowledge Exchange.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Mental Disorders of Aging Review Committee.
Meeting Date: February 5–7, 1992.
Place: Canterberry Hotel, 1733 N Street, NW., Washington, DC 20036.
Open: February 5, 9–10 a.m.
Closed: Otherwise.
Contact: Phyllis L. Zusman, room 9C–18, Parklawn Building, telephone (301) 443–3857.

Committee Name: Social and Group Processes Review Committee.
Meeting Date: February 6–8, 1992.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: February 6, 9–9:30 a.m.
Closed: Otherwise.
Contact: Bernice Cherry room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: National Advisory Mental Health Council.
Meeting Date: February 10–11, 1992.
Place:
February 10—Conference Rooms D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
February 11—Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: February 11, 9 a.m.—Ajournment.
Closed: Otherwise.
Contact: Carolyn Strete, Ph.D., room 9–105, Parklawn Building, telephone (301) 443–3367.

Committee Name: Violence and Traumatic Stress Review Committee.
Meeting Date: February 12–14, 1992.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Open. February 12, 9–10 a.m.
Closed: Otherwise.
Contact: Gwendolyn C. Artis, room 9C–18, Parklawn Building, telephone (301) 443–3944.

Committee Name: Behavioral Neuroscience Review Committee.
Meeting Date: February 12–14, 1992.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 12, 8:30–9:30 a.m.
Closed: Otherwise.
Contact: William H. Radcliffe, room 9C–18, Parklawn Building, telephone (301) 443–3857.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.
Meeting Date: February 13–14, 1992.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Open: February 13, 8:30–9:30 a.m.
Closed: Otherwise.
Contact: Camille Sookram, room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: Molecular Cellular, and Developmental Neurobiology Review Committee.
Meeting Date: February 18–20, 1992.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Open: February 18, 9–10 a.m.
Closed: Otherwise.
Contact: Shirley Maltz, room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: Health Behavior and Prevention Review Committee.
Meeting Date: February 18–20, 1992.
Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.
Open: February 18, 9–11 a.m.
Closed: Otherwise.
Contact: Monica F. Woodfork, room 9C–05, Parklawn Building, telephone (301) 443–4843.

Committee Name: Clinical Neuroscience Review Committee.
Meeting Date: February 19–21, 1992.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.
Open: February 19, 9–10 a.m.
Closed: Otherwise.
Contact: Maureen Eister, room 9C–08, Parklawn Building, telephone (301) 443–1340.

Committee Name: Clinical Psychopathogy Review Committee.
Meeting Date: February 19–21, 1992.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 19, 9–10 a.m.
Closed: Otherwise.
Contact: Tammye Cross, room 9C–08, Parklawn Building, telephone (301) 443–1340.

Committee Name: Services Research Review Committee.
Meeting Date: February 19–21, 1992.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Open: February 19, 9–10 a.m.
Closed: Otherwise.
Contact: Gloria Yockelson, room 9C–05, Parklawn Building, telephone (301) 443–0948.

Committee Name: Extramural Science Advisory Board.
Meeting Date: February 20–21, 1992.
Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: February 20–21, 9 a.m.–Adjournment.
Contact: Anthony Pollitt, room 17C–26, Parklawn Building, telephone (301) 443–3175.
Committee Name: Psychobiology and Behavior Review Committee.
Meeting Date: February 20–21, 1992.
Place: The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC 20037.
Open: February 20, 6–10 a.m.
Closed: Otherwise.
Contact: Linda Keperling, room 9C–18, Parklawn Building, telephone (301) 443–3944.
Committee Name: Perception and Cognition Review Committee.
Meeting Date: February 20–22, 1992.
Place: Holiday Inn—Governors House, 17th Street & Rhode Island Avenue, NW., Washington, DC 20036.
Open: February 20, 9–10 a.m.
Closed: Otherwise.
Contact: Debra D. Woods, room 9C–18, Parklawn Building, telephone (301) 443–3936.
Committee Name: Child/Adolescent Risk and Prevention Review Committee.
Meeting Date: February 20–22, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 20, 9–11 a.m.
Closed: Otherwise.
Contact: Dorothy L. Sanders, room 9C–18, Parklawn Building, telephone (301) 443–3857.
Committee Name: Cognitive Functional Neuroscience Review Committee.
Meeting Date: February 20–22, 1992.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20814.
Open: February 20, 8:30–9 a.m.
Closed: Otherwise.
Contact: Rodney A. Berry room 9C–23, Parklawn Building, telephone (301) 443–1177.
Committee Name: Biological Psychopathology Review Committee.
Meeting Date: February 24–25, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 24, 9–10 a.m.
Closed: Otherwise.
Contact: Helen Craig, room 9C–14, Parklawn Building, telephone (301) 443–1367.
Committee Name: Epidemiology Review Committee.
Meeting Date: February 24–26, 1992.
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.
Open. February 24, 9–10 a.m.
Closed: Otherwise.
Contact: Doris Lee-Robb, room 9C–15, Parklawn Building, telephone (301) 443–6470.
Committee Name: Emotion and Personality Review Committee.
Meeting Date: February 27–29, 1992.
Place: Guest Quarters Suite Hotel, 2500 Pennsylvania Avenue, NW., Washington, DC 20037.
Open. February 27, 9–9:30 a.m.
Closed: Otherwise.
Contact: Sheri L. Schwartzback, room 9C–05 Parklawn Building, telephone (301) 443–4843.

Dated: January 7, 1992.
Peggy W. Cookrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 92–804 Filed 1–10–92; 8:45 am]
BILLING CODE 4160–20–M

Alcohol, Drug Abuse, and Mental Health Administration Advisory Committee Meeting in January

AGENCY: Alcohol, Drug Abuse, and Mental Administration, HHS.

ACTION: Cancellation of meeting notice.

SUMMARY: The January 15, 1992, meeting of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, announced in the Tuesday, December 10, 1991, **Federal Register,** Volume 56, No. 237, on page 64522, has been canceled. The date for the next meeting has not been set.

Dated: January 7, 1992.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 92–801 Filed 1–10–92; 8:45 am]
BILLING CODE 4160–20–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS. The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Revision; *Title of Information Collection.* Information Collection Requirements in the Hospice Care Regulation, 42 CFR 418; *Form Number:* HCFA–R–30; *Use:* These information requirements are needed to implement the Medicare hospice benefit—information is needed from individuals electing hospice care and from hospices participating in the program to assure that statutory and regulatory requirements are met; *Frequency:* On occasion; *Respondents:* Individuals/households, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 4,666,368; *Average Hours per Response:* .25; *Total Estimated Burden Hours.* 1,166,592.

2. *Type of Request:* Revision; *Title of Information Collection:* Information Collection Requirements in 42 CFR 405, Conditions of Participation for Rehabilitation Agencies and Conditions of Coverage for Physical Therapists in Independent Practice; *Form Number:* HCFA–R–44; *Use:* This information is needed to determine if an outpatient clinic, rehabilitation agency, public health agency, or physical therapist is in compliance with published health and safety requirements; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 6,359; *Average Hours per Response:* 1.6; *Total Estimated Burden Hours:* 10,174.

3. *Type of Request:* New; *Title of Information Collection.* Medicare Credit Balance Reporting Requirements; *Form Number:* HCFA–838; *Use:* The collection of credit balance information is needed to ensure that millions of dollars in improper payments are collected; *Frequency:* Quarterly; *Respondents.* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 107,708; *Average Hours Per Response:* 6; *Total Estimated Burden Hours:* 646,248.

4. *Type of Request:* Revision; *Title of Information Collection:* Transmittal and Notice of Approval of State Plan Material; *Form Number:* HCFA–179; *Use:* Form HCFA–179 is used by Medicaid State agencies to transmit State plan material to HCFA for approval prior to amending their State plans; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,254; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1,254.

5. *Type of Request:* New; *Title of Information Collection:* Preclearance for Information Collection for Community Nursing Organizations Demonstration; *Form Number:* HCFA–P–17; *Use:* This information collection requirement will result from two contracts to develop, implement, and evaluate a demonstration of Community Nursing Organizations mandated by the Omnibus Budget Reconciliation Act of 1987; the first contract would involve data collection by demonstration sites on their enrollees and the second contract would collect information from both the sites and their enrollees; *Frequency:* One-time; *Respondents.* Individual/households, Businesses/other for profit and non-profit institutions; *Estimated Number of Responses.* Not applicable; *Average*

Hours Per Response: Not applicable; *Total Estimated Burden Hours:* Not applicable. *Additional Information or Comments:* Call the Reports Clearance Officer on 410–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 6, 1992.

J. Michael Hudson,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–701 Filed 1–10–92; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

Indian Health Service; Correction Notice; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service, Chapter HG, (Indian Health Service), of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (51 FR 47053–46, December 11, 1987, as most recently amended at 56 FR 56233, November 1, 1991) is further amended to correct the Order of Succession published in FR 56 43794, September 4, 1991.

Indian Health Service

Under Section HG.30. Order of Succession, Aberdeen Area Office, change item (1) to Deputy Director, change item (2) to Health System Administrator, Office of Administrative Support, change item (3) to Medical Officer (Administration), Office of Patient Care and Health Evaluation, change item (4) to Supervisory Environmental Engineer, Office of Environmental Health and Engineering, change item (5) to Program Analysis Officer, Office of Planning and Legislation, and change item (6) to Public Health Advisor, Office of Tribal Health Management.

Dated: December 18, 1991.

Everett R. Rhoades,

Director, Indian Health Service.

[FR Doc. 92–805 Filed 1–10–92; 8:45 am]

BILLING CODE 4160–16–M

Social Security Administration

Rescission of Social Security Rulings on the Standards SSA Uses for Consultative Examinations, the Termination Standard for Disability Cases, and the Medical Evidence Necessary To Make a Determination of Disability in Social Security and Supplemental Security Income Cases

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Rulings SSR 82–14, SSR 82–30, SSR 82–48c, SSR 82–65, and SSR 83–6c.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 82–14, SSR 82–30, SSR 82–48c, SSR 82–65, and SSR 83–6c.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 82–14, SSR 82–30, SSR 82–48c, SSR 82–65, and SSR 83–6c were published in the 1981–1985 Cumulative Edition of the Rulings. These Rulings concern the standards SSA uses for consultative examinations, the termination standard for disability cases, and the medical evidence necessary to make a determination of disability in Social Security (title II) and supplemental security income (title XVI) cases.

On August 1, 1991, we published final regulations in the **Federal Register** at 56 FR 36932, which comply with section 9 of Public Law 98–460. The Public Law states that SSA's standards for consultative examinations, which are purchased at Government expense, should appear in regulations.

These regulations include (a) the standards for determining when to obtain a consultative examination; (b) the type of consultative examination to be purchased; and (c) the monitoring procedures for both the purchase process and the consultative examination reports. Section 9 of Public Law 98–460 also requires that SSA give consideration to all evidence available in a claimant's case record and develop a complete medical history covering at least the preceding 12 months in any case where a decision is made that the individual is not under a disability. Because these regulations have been published, the above-mentioned Rulings became obsolete as of August 1, 1991, the effective date of these regulations. Consequently, we are rescinding them. To the extent that SSR 83–6c also concerns the applicability of the Medical-Vocational Guidelines, the Supreme Court's subsequent decision in *Heckler* v. *Campbell* (SSR 83–46c), upholding our use of the Guidelines, governs this issue. Accordingly, SSR 83–6c is revoked in its entirety.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.807 Supplemental Security Income.)

Dated: January 3, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92–611 Filed 1–10–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–92–3038; FR–2736–N–5]

Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waiver Requests: September 1, 1991 through November 30, 1991.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the third of a series, to be published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC

20410. (Telephone (202) 708–3055. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers a Notice in the **Federal Register.** These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the third Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. The second notice, published on October 28, 1991, covered the period from June through August 1991.

Today's document updates HUD's waiver-grant activity through November 30, 1991. In approximately three months, the Department will publish a similar notice, providing information about waiver-grant activity for the period from December 1, 1991 through the end of February 1992.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver section. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in this listing only under § 811.105(b).)

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between December 1, 1991 and February 29, 1992.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: January 7, 1992.

Jack Kemp,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development September 1 through November 30, 1991

Note to reader: The person to be contacted for additional information about the waiver-grant items numbered 1 through 4 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Phone: (202) 708–2565.

1. *Regulation:* 24 CFR 511.11(c)(2)(i)(B).

Project/Activity: New York, New York. Extension of the 90-day deadline for submission of the Project Completion Report under the Rental Rehabilitation program (RRP).

Nature of Requirement: 24 CFR 511.11 (c)(2)(i)(B) requires that a Project Completion Report identifying the private entity to which ownership has been transferred be submitted to HUD within 90 days on the final draw.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Dated Granted: October 17, 1991.

Reasons Waived: A waiver of the regulation was conditionally granted with respect to five RRP projects which had not been transferred to private ownership, even though all rehabilitation had been completed and all RRP grant funds committed to those five project expended, because of pending resolution of a lawsuit. The conditions were as follows:

1. The City would periodically provide HUD with a written report on the status of litigation preventing the transfer of the projects to private ownership;

2. Within 90 days of resolution of the lawsuit in favor of the City, the City shall submit the required Project Completion Report for each project; or

3. Within 30 days of resolution of the lawsuit in favor of the plaintiffs, the City shall cancel the five projects and reimburse the Department a sum equal to the RRP grant amounts.

2. *Regulations:* 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Augusta, Georgia. Under the Community Development Block Grant program, reimbursement of pre-agreement costs for development of a neighborhood shopping center to serve low and moderate income residents.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits preagreement costs to those described in subparagraph 570.200(a)(5).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Dated Granted: September 10, 1991.

Reasons Waived: In addition to $465,000 programmed from the City's FY 1991 Community Development Block Grant, the City requested approval to use $300,000 from the FY 1992 grant, $213,000 from the FY 1993 grant, and $100,000 from the FY 1994 grant for rehabilitation of historic commercial structures, new commercial construction and a landscaped parking lot. All construction would occur during the first year. Completion during the first year would provide the low and moderate income residents of the neighborhood, who lack transportation, with a shopping center without otherwise having to wait three or four years for construction funding to come available. Failure to grant a waiver of pre-agreement costs would cause undue

hardship on the residents and adversely affect the purposes of the Act.

3. *Regulation:* 24 CFR 57.200(a)(5) and 24 CFR 570.200(h).

Project Activity: Cobb County, Georgia. Under the Community Development Block Grant program, reimbursement of pre-agreement costs for the renovation of an existing county-owned building for use as an adult day care facility for the elderly.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits pre-agreement costs to those described in subparagraph 570.200(a)(5).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: November 4, 1991.

Reasons Waived: Because of substandard and inadequate conditions, the County's current facility had been cited in violation of the State's Adult Day Care Standards. The County is required to vacate the current facility as quickly as possible or face State closure of the facility. Without authority to reimburse costs with FY 1992 funding, the County would not be able to provide services to this special population group for a 12–18 month period, or until such time as the County receives its FY 1992 grant. In addition, the County would avoid increased project costs totalling $50,000–$75,000. The $500,000 project includes $100,000 from FY 1990 funds, $200,000 from FY 1991, and $200,000 from FY 1992. Failure to grant the waiver of pre-agreement cost limitations would, therefore, cause undue hardship and adversely affect the purposes of the Act.

4. *Regulation:* 24 CFR 576.55(b)(1).

Project/Activity: Houston, Texas. Extension of the deadline for obligating Emergency Shelter Grant (ESG) funds for 30 days.

Nature of Requirement: 24 CFR 576.55(b)(1) requires each formula city and county, and each territory, to obligate all Emergency Shelter Grant funds within 180 days of the date of the grant award.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 19, 1991.

Reasons Waived: The City of Houston indicated that, in order to use Community Development Block Grant (CDBG) funds to match ESG funds without additional administrative burdens, obligation of FY 1991 ESG fund could not occur before the CDBG funds became available in late October 1991. The City requested an extension of the ESG obligation deadline from September 19, 1991 to October 19, 1991. In approving the waiver of the deadline, the Department noted that, though not granting the waiver would cause undue hardship, a waiver for a longer period of time would not have been granted.

Note to reader: The person to be contacted for additional information about the waiver-grant items numbered 5 through 6 in this listing is: Gerald Benoit, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Phone: (202) 708–0477.

5. *Regulation:* 24 CFR 882.101(b)(2).

Project/Activity: King County Housing Authority.

Nature of Requirement: Regulation prohibits a PHA from administering housing assistance under the section 8 rental certificate program for units owned by the PHA.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 19, 1991.

Reason Waived: In order to prevent undue hardship for five families participating in the section 8 Rental Certificate program who resided in Cottonwood Apartments prior to acquisition of this FNMA-repossession project by the King County Housing Authority, and because all section 8 Administrative responsibilities for these five families will subcontracted to another PHA.

6. *Regulation:* 24 CFR 882.602.

Project Activity: Fairfield Housing Authority.

Nature of Requirement: Manufactured Home Space. Regulation requires that the space shall include all maintenance and management services necessary for decent, safe, and sanitary housing, such as maintenance of utility lines, garbage and trash collection, and maintenance of roads, walkways and other common areas and facilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: November 22, 1991.

Reason Waived: To allow sixteen section 8 rental certificate program families living in the Casa Nova Mobile Home Park to assume responsibility for the garbage collection costs.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 7 through 11 in this listing is: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development; 451 Seventh Street, SW., Washington, DC 20410, Phone: 708-2730.

7. *Regulation:* 24 CFR 885.5—Loans for Housing for the Elderly or Handicapped. Definitions, Housing and Related Facilities.

Project Activity:

Project name	Project No.	Regional office
Sandwood Apartments.	054–HH004	Atlanta.
Bridgewood Apts.	054–HH005	Atlanta.
Pres Woodrow Wilson.	136–EH111	San Francisco.
Vista Lane.....	122–EH367	San Francisco.

Nature of Requirement: The Regulations cited above prohibit section 202 assistance for intermediate care facilities due to the traditional medical nature of such facilities.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between July 1, 1991 and August 31, 1991.

Reason Waived: Often borrowers have access to service funding that would not otherwise be available if a project is designed as an intermediate care facility. Therefore, under existing Departmental procedures, a Borrower may receive a waiver if the facility is for the developmentally disabled and it provides evidence that the housing and services will not be medically oriented.

8. *Regulation:* 24 CFR 885.5—Loans for Housing for the Elderly or Handicapped. Definitions, Housing and Related Facilities.

Project Activity:

Project name	Project No.	Regional office
Miami Manor Group Home.	046–EH175	Chicago.

Nature of Requirement: The Regulations cited above prohibit Section 202 assistance for intermediate care facilities due to the traditional medical nature of such facilities.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: Often borrowers have access to service funding that would not otherwise be available if a project is designed as an intermediate care facility. Therefore, under existing Departmental procedures, a Borrower may receive a waiver if the facility is for the developmentally disabled and it

provides evidence that the housing and services will not be medically oriented.

9. *Regulation:* 24 CFR 885.230—Loans for Housing for the Elderly or Handicapped. Duration of section 202 Fund Reservation.

Project/Activity:

Project name	Project No.	Regional office
Riese St. Gerard Hsg.	031-EH221	New York.
HOPE Senior Housing.	012-EH633	New York.
Gateway Apts	051-EH169	Philadelphia.
Overlook Community Hsg.	087-EH166	Atlanta.
Egida Padre Jose D Boyd.	056-EH316	Atlanta.
Ginger Thomas	056-EH324	Atlanta.
SJK, Inc.	063-EH204	Atlanta.
Georgetown 202	054-EH137	Atlanta.
Teamstger Retiree Hsg.	087-EH157	Atlanta.
Northwest Homes, Inc.	081-EH137	Atlanta.
Project Independence.	086-EH133	Atlanta.
West Town Senior	072-EH465	Chicago.
Raphael Manor	064-EH224	Fort Worth.
Philip Street Elderly.	140-EH054	San Francisco.
Ridgeview Manor	122-EH480	San Francisco.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any Section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a 12-month extension is granted by the Regional Administrator, for a total maximum 36-month period.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts and development of these units furthered the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

10. *Regulations:* 24 CFR 885.41(g)—Loans for Housing for the Elderly or Handicapped. Loan Interest Rate.

Project/Activity

Project name	Project No.	Regional office
HOPE Senior Housing.	012-EH633	New York.
Overlook Community Hsg.	087-EH166	Atlanta.
Egida Padre Jose D Boyd.	056-EH316	Atlanta.
Ginger Thomas	056-EH324	Atlanta.
Project Independence.	086-EH133	Atlanta.
West Town Senior	072-EH465	Chicago.
New Salem Manor	043-EH311	Chicago.
Ridgeview Manor	122-EH480	San Francisco.

Nature of Requirement: The Regulations cited above require the use of the interest rate in effect for the year in which the Section 202 project goes to initial loan closing or the optional interest rate for those projects which are eligible when an acceptable conditional or firm commitment application is received.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioiner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: These projects required a waiver to use the Fiscal Year 1992 interest rate of 8⅜ percent because, while the rate had already been determined, it had not yet been published in the Federal Register at the time the waiver was granted. Without approval of this waiver, additional delays would have occurred, which would have made these projects more costly to the Government.

11. *Regulation:* 24 CFR 885.415(k)—Loans for Housing for the Elderly or Handicapped.

Project/Activity:

Project name	Project No.	Regional office
Al Gomer	031-EH190	New York.
Project Live II	031-EH220	New York.
Apartment II	031-EH226	New York.
Safe Harbor	082-HH001	Fort Worth.
Eagle Watch Estates.	093-HH001	Denver.

Nature of Requirement: The Regulations cited above have historically been interpreted by the Department to prohibit any encumbrances on the title that may subsequently limit HUD's ability to sell the property should the property be acquired by HUD through foreclosure.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: This is a precedent for such waivers when the restrictioin is for low-rent housing use. Requirements for initial loan closings of section 202 projects set forth in 24 CFR 885.415(k) that the Borrower shall furnish such executed documents on HUD-approved forms as the field office may require, including a title policy insuring that the mortgage constitutes a first lien on the project. To refuse to waive this regulation would cause a hardship to the borrowers, who have expended substantial funds to reach this stage of procesing. Therefore, the granting of this waiver is in the public interest and is consistent with both programmatic objectives and the Secretary's goal.

Note to Reader: The person to be contacted for additioinal information about waiver-grant item number 12 in this listing is: Ed Winiarski, Technical Support Division, Office of Insured Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: 708–0624.

12. *Regulation:* 24 CFR 885.810(c)(3)(i).

Project/Activity:

Project name	Project No.	Field office
Bridge Street Senior Housing.	012-EH713	New York.
Senior Housing for the Clinton Comm.	012-EH555	New York.
John Walter Edwards Apartments.	012-EH655	New York.
Project H.O.P.E.	012-EH633	New York.

Nature of Requirement: The Regulation cited above requires the Department of Housing and Urban Development to limit direct loan financing to the development cost limits set forth in paragraphs (c)(1) and (c)(2) of this section. Paragraph (c)(3)(i) authorizes the Assistant Secretary to increase the cost limits by up to 110 percent in any geographic area where the cost levels require, and to increase the cost limits by up to 140 percent on a project-by-project basis. Waivers of this section grant authority to increase the cost limits by up to 160 percent on a project-by-project basis for specific HUD Offices where development costs are consistently higher than anywhere else in the nation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: Not to approve the above HCP waiver would cause hardship to the Borrower, who has

expended substantial funds to reach this stage of processing. Further, if the project is cancelled, this much-needed housing would not be built. Granting the waiver is, therefore, in the public interest and consistent with both programmatic objectives and the Secretary's goal of increasing affordable housing opportunities for low income families.

Note to Reader: The person to be contacted for additional information about waiver-grant item number 13 in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1015.

13. *Regulation:*
24 CFR 905.404 (a).
24 CFR 905.905.407 (b)(1)(3).
24 CFR 905.407 (c).
24 CFR 905.410.
24 CFR 905.413 (a), (b) and (d).
24 CFR 905.416 (c) and (d).
24 CFR 905.419 (b) and (c).
24 CFR 905.422.
24 CFR 905.440 (b)(1) and (2).
24 CFR 905.503 (c)(i).

Project/Activity: Conversion of 5 Turnkey III units to the Mutual Help Homownership Opportunity Program by the Ft. Peck Indian Housing Authority in Poplar, MT.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert existing units funded and built under one program to operation under a different program.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 30, 1991.

Reason Waived: This action was requested, and granted, because many of these homebuyers have been in their Turnkey III units since they were built and through the years have increased their income. Converting the participants to the Mutual Help Program will enable them to become homeowners sooner because their payments will be applied to the purchase price of their homes instead of going to the project reserve.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 14 through 15 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, Phone: (202) 708–1872.

14. *Regulation:* 24 CFR 913.107(a).

Project/Activity: Public housing projects owned and operated by the Housing Authority of Gilbert, Minnesota.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 9, 1991.

Reason Waived: To allow the Gilbert, Minnesota Housing Authority to establish ceiling rents on one-bedroom units at Broadview Manor on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

15. *Regulation:* 24 CFR 967.304(c).

Project/Activity: Public Housing Manager Certification Waiver Request.

Nature of Requirement: The requlation requires all public housing managers and assistant managers to be certified if they manage 75 or more units. Probationary certification, not to exceed two years, is acceptable for purposes of salary eligibility in the PHA's operating budget.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: September 19, 1991.

Reason Waived: The Altoona Housing Authority (AHA) requested a waiver of 24 CFR 967.304(c) on behalf of Mr. Richard Mauer, Acting Project Manager, based on the fact that the AHA acted reasonably and responsibly in relying on NAHRO to extend Mr. Mauer's probationary certification. NAHRO inadvertently provided Mr. Mauer with a probationary certification designation over 2½ years, which is contrary to the provisions of the above cited regulation. Since Mr. Mauer is now fully certified and based on NAHRO's error, a waiver was granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 16 through 19 in this listing is: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1800.

16. *Regulation:* 24 CFR 968.210(g)(2).

Project/Activity: Public Housing Modernization, Project Number MO 76–7; MO 24–1 and MO 24–2 for East Prairie, Bernie and Poplar Bluff Housing Authorities.

Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: September 9, 1991.

Reason Waived: These additional funds are needed to fund rehabilitation necessary for the public housing agencies to meet the section 504 requirements on accessibility for the handicapped. The waivers provide a sixth and final funding stage of comprehensive modernization.

17. *Regulation:* 24 CFR 968.210(g)(2).

Project/Activity: Public Housing Modernization, Project Number NY 3–1; 3–2 and 3–5, Yonkers Housing (YHA).

Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: September 19, 1991.

Reason Waived: Although all three developments have previously been funded for five stages of comprehensive modernization, additional funding is needed because not all the necessary work items were funded and because previously funded work has been destroyed, leaving and developments in deplorable condition. The waivers provide a new one-stage of funding at the three developments limited to item not previously funded and conditioned on the YHA hiring expertise in both maintenance and modernization.

18. *Regulation:* 24 CFR 968.210(g)(2).

Project/Activity: Public Housing Modernization, Project Number PA 2–30, Philadelphia Housing Authority.

Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: September 24, 1991.

Reason Waived: A CIAP funded architectural and engineering study identified additional modernization needs. The waiver allows a one-time funding of a new comprehensive modernization for the development. This increment of funding will satisfy all remaining modernization needs.

19. *Regulation:* 24 CFR 968.210(g)(2).
Project/Activity: Public Housing Modernization, Project Number PA 1-7, Housing Authority of the City of Pittsburgh.
Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.
Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.
Dated Granted: September 26, 1991.
Reason Waived: There was a misunderstanding in the earlier funding stages of the concept of comprehensive modernization. The waiver allows a one-time funding of a new comprehensive modernization for the development. This increment of funding will satisfy all remaining modernization needs.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 20 through 22 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708-1872.

20. *Regulation:* 24 CFR 990.109(b)(3)(iv).
Project/Activity: Brekenridge, Minnesota Housing and Redevelopment Authority.
Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 14, 1991.
Reason Waived: The PHA is a small agency with 87 units of elderly housing. It has been experiencing a vacancy problem for the past several years during which it has pursued many vacancy reduction strategies without success. PHA was allowed to use 73% as its projected occupancy percentage in calculating its operating subsidy eligibility for FY 1991 and 74% for FY 1992. The Minneapolis/St. Paul Office is directed to assist the PHA in developing a plan to resolve the problem.

21. *Regulation:* 24 CFR 990.109(b)(3)(iv).
Project/Activity: Jetmore, Kansas Public Housing Authority.
Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 14, 1991.
Reason Waived: The PHA is a very small Authority consisting of one elderly project with 20 units. Vacancies have been reduced from 12 to 7 with further progress possible. The goal of 5 units for an authority of this size would translate to the approved 75% occupancy percentage. An occupancy percentage of 65% was not approved in order to provide an incentive to the authority to continue its vacancy-reduction efforts.

22. *Regulation:* 24 CFR 990.118(h).
Project/Activity: Housing Authority of the City of Houston.
Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: September 30, 1991.
Reason Waived: The PHA is part of a modernization program that is not completed as far as was initially planned. The delays in the work were approved by HUD and resulted in revised project implementation schedules. The PHA was allowed to reduce its 1990 and 1991 HUD-approved occupancy goals by 4,320 units in 1990 and 3,518 units in 1991.

[FR Doc. 92-742 Filed 1-10-92; 8:45 am]
BILLING CODE 4210-32-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-91-3365; FR-3176-N-01]

Certification of Substantially Equivalent Agencies; and Interim Referral Agencies; Annual Notice

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: As required by 24 CFR 115.6(f), this Notice announces (1) an updated consolidated list of all certified agencies; (2) a list of all agencies whose certification has been withdrawn since publication of the previous notice; (3) a list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since the issuance of the previous notice; (4) a list of agencies with respect to which a notice of comment has been published under § 115.6(b) and whose status remains pending; (5) a list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) and whose withdrawal remains pending; and (6) a list of agencies with which on agreement for interim referrals or other utilization services has been entered into under § 115.11 and remains in effect. These announcements are applicable for calendar year 1991.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, room 5218, SW., Washington, DC 20410-2000.

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600-3620), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115. This Notice announces, among other things, the 1991 list of certified agencies under § 115.6(f), and the agencies with which the Department has entered into an agreement for interim referral of complaints in accordance with § 115.11.

This Notice

In accordance with the requirements of 24 CFR 115.6(f), the Department makes the announcements set forth below. These announcements are applicable for the year 1991.

Updated Consolidated List of Certified Agencies

The Department announces that the agencies administering the fair housing laws of the following States and Localities are certified under section 810(f) of the Fair Housing Act and 24 CFR 115.6(d):

States (36)

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska

Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities (79)

Alaska

Anchorage

Arizona

Phoenix

Connecticut

New Haven

District of Columbia

Washington

Florida

Brown County
Clearwater
Dade County (Metropolitan)
Escambia County
Gainesville
Hillsborough County
Jacksonville
Orlando
Pensacola
Pinellas County
St. Petersburg
Tallahassee
Tampa

Illinois

Bloomington
Danville
Elgin
Evanston
Hazel Crest
Park Forest
Springfield
Urbana

Indiana

Columbus
East Chicago
Fort Wayne
Gary
Hammond
Marion
South Bend

Iowa

Des Moines
Dubuque
Iowa City

Kansas

Kansas City
Lawrence
Olathe
Salina

Kentucky

Jefferson County
Lexington-Fayette

Maryland

Howard County
Montgomery County
Prince Georges County

Massachusetts

Boston
Cambridge

Minnesota

Minneapolis
St. Paul

Missouri

Kansas City
St. Louis

Nebraska

Lincoln
Omaha

New York

New York City
Rockland County

North Carolina

Asheville
Charlotte
Mecklenburg County
New Hanover County
Raleigh
Winston-Salem

Ohio

Dayton

Pennsylvania

Allentown
Harrisburg
Philadelphia
Pittsburgh
Reading
York

South Dakota

Sioux Falls

Tennessee

Knoxville

Texas

Fort Worth

Virginia

Arlington County

Washington

King County
Seattle
Tacoma

West Virginia

Beckley
Charleston
Huntington

Wisconsin

Beloit
Madison

Withdrawal of Certification; Denial of Certification; and Pending Requests for Certification

The Department announces that no certification has been withdrawn since publication of the previous notice; no notice of denial of certification has been published since the previous notice; and no agencies with respect to which a notice of comment has been published under § 115.6(b) have pending requests for certification.

Interim Certification

The Department announces that agencies administering the fair housing laws of the following States and Localities entered into an agreement for interim referrals on September 12, 1988. These agencies are therefore considered to have interim certification in accordance with section 810(f)(4) of the Act.

States (2)

Georgia
Ohio

Localities (5)

Lee County, Florida
Durham, North Carolina
Greensboro, North Carolina
St. Joseph, Missouri
Albany, New York

In addition, the Department announces that agencies administering the fair housing laws of the following States and Localities have entered into an agreement for interim referrals subsequent to September 12, 1988. These agencies are also considered to have interim certification in accordance with section 810(f)(4) of the Fair Housing Amendments Act of 1988. The agencies and the dates of their agreements are as follows:

States (6)

Arizona
Florida
Indiana
North Carolina
South Carolina
Texas

Localities (2)

Asheville-Buncombe County, NC
Dallas, TX

Dated: January 6, 1992.

Leonora L. Guarraia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 92-806- Filed 1-10-92; 8:45 am]
BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: January 27, 28, and 29, 1992; 9 a.m. to 5:30 p.m. daily; the Washington Dulles International Airport Ramada Renaissance Hotel, 13869-71 Park Center Road, Herndon, Virginia. The meeting of the Task Force is open to the public .

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs, MS 4140, 1849 C Street NW., Washington, DC, 20240, Telephone number (202) 208-4173.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will continue its work to recommend restructuring of the Bureau of Indian Affairs.

A primary objective of the Task Force for this meeting is the completion of the progress report to the Appropriations Committees of the Congress and the Secretary of the Interior. Time for comments from the public on Task Force issues will be available during the meeting.

Dated: January 8, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92-761 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-02-M

Office of the Secretary

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records maintained by the Geological Survey. The system of records notice being abolished is entitled "Authorized Cashier, Alternate Cashier, Certifying Officer and Cashier and Collection Officers—Interior, EGS-2," and was previously published in the **Federal Register** on April 11, 1977 (42 FR 19054). The records described in the existing system of records notice continue to be maintained, but the records are not retrieved by the name of the individual or any other personal identifier. The records are retrieved by the name of the city and state in which the imprest fund is located. The records are therefore not subject to the Privacy Act.

This change shall be effective on publication in the **Federal Register** (January 13, 1992). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, 1849 C Street NW., Mail Stop 2242, (PMI), Washington, DC 20240, telephone 202-208-5339.

Dated: January 7, 1992.

Janet L. Bishop,

Acting Director, Office of Management Improvement.

[FR Doc. 92-733 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[CA-060-02-4410-04-ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Law 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, is scheduled to meet in formal session Thursday, February 20, 1992, from 8 a.m. to 5 p.m., and Saturday, February 22, 1992, from 8 a.m. to 5 p.m., in the meeting room of the Vacation Inn, 2000 Cottonwood Circle, El Centro, California. The meeting will be held subject to the appointment of new members for the 1992-1994 term by the Secretary of the Interior. Individuals wishing to participate in the meeting should call BLM's California Desert District Public Affairs staff at (714) 697-5215 in February to verify that the meeting will be held.

Agenda items for the meetings will include:

—A question and answer session regarding updates on the Bureau of Reclamation withdrawal review in BLM's El Centro Resource Area, oil and gas leasing on BLM-administered lands in the California Desert District, and the interagency planning effort for the Salton Sea region;
—An overview of the California Desert District's budget for Fiscal Year 1992;
—A review of public comments on the 1989/1990 California Desert Conservation Area Plan amendments and Council discussion of proposed decision;
—A review of the public comments on the South Coast Draft Resource Management Plan and Council discussion of the proposed decision;
—An update on route designation in the California Desert;
—Council discussion and decisions regarding proposed resolutions from the California Desert District's futuring committee;
—Presentation of a BLM/National Park Service wild horse and burro operating plan for the California Desert Conservation Area/Death Valley National Monument boundary region, with an opportunity for public comments and Council discussion and recommendations; and
—Discussion of the 1991 California Desert Conservation Area Plan Recreation Element Amendment, with recommendations from the Council on the preferred alternative.

All formal meetings are open to the public. Time is allocated for public comments, and time also may be made available by the Council Chair during the presentation of various agenda items.

On Friday, February 21, from 7:30 a.m. to 5 p.m., Council members will participate in a field tour in the Imperial Sand Dunes Recreation Area, including stops at the Plank Road, Buttercup dune area, American Girl Mine, the Gold Field Mine interpretive hiking trail, the Osborne overlook, Cahuilla Ranger Station, and Roadrunner and Gecko campgrounds.

The public is welcome to participate in the field tour, but should plan on providing their own transportation and drinks, as well as lunch on Friday. Anyone interested in participating should contact BLM at (714) 697-5215 for more information. The tour will assemble at the Vacation Inn at 7:15 a.m.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Mr. David Fisher, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507; (714) 697-5215.

Dated: December 31, 1991.

Gerald E. Hiller,

District Manager

[FR Doc. 92-712 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-40-M

[NV-940-02-4212-24; Nev-064866]

Order Providing for Opening of Lands, Correction; Nevada

January 7, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action retracts a portion of the order providing for opening of lands that was published in the **Federal Register** on page 66075, December 20, 1991, as Document 91-30387.

EFFECTIVE DATE: Date of publication of this document.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6526.

SUPPLEMENTARY INFORMATION: Delete paragraph No. 3 of Document 91-30387 published on December 20, 1991, which affects the following described lands:

Mount Diablo Meridian, Nevada

T. 31 N., R. 50 E.,
Secs. 13, 23, 25;
Sec. 27, NE¼, N½SE¼, SE¼SE¼;
Sec. 35.

The area described contains 2,923.35 acres in Eureka County.

The opening order as it pertains to the above-described land is retracted because of a pending appeal regarding location of certain mining claims.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-735 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Assessments for AFS Late Reports

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of AFS late-reporting assessment rate.

SUMMARY: The Minerals Management Service (MMS) regulation at 30 CFR 218.40(a) provides for assessments in the nature of liquidated damages for late reports submitted by payors, operators, or lessees on Federal and Indian leases. The regulation at 30 CFR 218.40(e) requires that the assessment amount (rate) for each violation will be established periodically, based on MMS experience with costs, and that a Notice of the established assessment rate will be published in the **Federal Register**. This Notice establishes the assessment rate for late reporting submitted on Forms MMS-2014 and MMS-4014 to the MMS Auditing and Financial System (AFS), in accordance with the regulation.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Betty Middle, Chief, Automated Exception Processing Section, MS 3212, Minerals Management Service, P.O. Box 25165, Denver, Colorado 80225-0165, at (303) 231-3582 or (FTS) 326-3582.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public of the assessment rate for all late reports submitted on Forms MMS-2014 and MMS-4014 by payors, operators, or lessees to the AFS on Federal and Indian leases pursuant to established regulations.

The rate established by MMS for all late reports submitted on Forms MMS-2014 and MMS-4014 to the AFS is $10 per report. This rate will be assessed for each report that is received late. A report is defined at 30 CFR 218.40(c) as each line item on a Form MMS-2014 or Form MMS-4014, consisting of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number. The total AFS late-reporting assessments shall not exceed $10,000 per payor code per monthly AFS late-reporting billing cycle.

The AFS late-reporting assessment rate established in this Notice will apply to reports received late after the effective date. This rate will remain in effect until a subsequent Notice is published in the **Federal Register** which changes the assessment rate.

Dated: January 6, 1992.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 92-584 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 4, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Written comments should be submitted by January 28, 1992.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Fremont County

Florence Oil Field, Address Restricted, Florence vicinity, 92000005

Pueblo County

McClelland Orphanage, 415 E. Abriendo Ave., Pueblo, 91002043

IOWA

Polk County

Stoner, Thomas I., House, 1030 56th St., Des Moines, 92000006

SOUTH DAKOTA

Beadle County

Drake, Hattie O. and Henry, Octagon House, 605 Third St., SW., Huron, 91002045

FAULK COUNTY

Byrne, Gov. Frank M., House, 1017 St. John St., Faulkton, 91002044

VIRGINIA

Giles County

Pearisburg Historic District, Roughly, Wenonah Ave. from Tazewell St. to Main St. and adjacent parts of N. and S. Main, Pearisburg, 92000004

Bedford Independent City

Avenel, 413 Avenel Ave., Bedford (Independent City), 92000003

[FR Doc. 92-740 Filed 1-10-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 362)]

CSX Transportation, Inc.—Abandonment Between Speedway and Mitchellville—In Marion County, IN; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT) to abandon 3.25 miles of rail line between Milepost 129.2 at Speedway and Milepost 132.45 at Mitchellville, in Marion County, IN. The abandonment certificate will become effective February 10, 1992, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and CSXT no later than 10 days from the date of

publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: January 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 92–760 Filed 1–10–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Tonka Corp.; TA–W–26,130, St. Louis Park, MN et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor issued a Certification of Eligibility to apply for worker adjustment assistance on October 23, 1991, applicable to all workers of Tonka Corporation, St. Louis Park, Minnesota (TA–W–26,130); Tonka Products Division, St. Louis Park, Minnesota (TA–W–26,133) and El Paso, Texas (TA–W–26,134; Parker Brothers Division, Beverly, Massachusetts (TA–W–26,143) and Salem, Massachusetts (TA–W–26,144); and the Kenner Products Division, Cincinnati, Ohio (TA–W–26,145). The notice was published in the Federal Register on November 5, 1991 (56 FR 56530).

The certifications were amended on November 22, 1991 to include several sales workers of the Tonka Products Division and on December 6, 1991 to include sales workers for the Parker Brothers and Kenner Products Division who were not included under the earlier certifications. The amended certifications were published in the Federal Register on December 2, 1991 (56 FR 61262) and on December 20, 1991 (56 FR 66087).

Additional information was received by the Department showing worker separations prior to January 1, 1991 at the Kenner Products Division. Accordingly, the Notice is amended by deleting the previous impact date of January 1, 1991 and inserting a new impact date of December 1, 1990 for the Kenner Products workers.

The amended notice applicable to TA–W–26,130; TA–W–26,133; TA–W–26,134; TA–W–26,143; TA–W–26,144 and TA–W–26,145 is hereby issued as follows:

"All workers of the following firms of Tonka Corporation: (1) Tonka Corporation, St. Louis Park, Minnesota (TA–W–26,130); (2) Tonka Products Division, St. Louis Park, Minnesota (TA–W–26,133) and (3) El Paso, Texas (TA–W–26,134); (4) Parker Brothers Division, Beverly, Massachusetts (TA–W–26,143) and (5) Salem, Massachusetts (TA–W–26,144); and (6) Kenner Products Division, Cincinnati, Ohio (TA–W–26,145) who became totally or partially separated from employment on or after July 17, 1990, and all Tonka Products Division's sales personnel operating in the following States: Ohio, Illinois, California, Washington, New Jersey, New York and Texas (TA–W–26,133A–G); and all Parker Brothers Division's sales personnel operating in the following States: Maine, New Hampshire, Nevada, and Florida (TA–W–26,143A–D) who became totally or partially separated from employment on or after January 1, 1991; and all Kenner Products Division's sales personnel operating in the following States: Texas, Missouri, and Michigan (TA–W–26,145A–C) who became totally or partially separated from employment on or after December 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC., this January 6, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–777 Filed 1–10–92; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 91–1]

Public Hearings: Artists' Resale Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearings.

SUMMARY: The Copyright Office issues this notice to inform the public that it will hold hearings in connection with a report to Congress on artists' resale royalties. The Office invites comment or participation in the public hearings from individuals or groups involved in the creation, exhibition, dissemination, and preservation of works of arts, including artists, artists' organizations, art dealers, auction houses, art galleries, art museums, collectors of fine art, and investment advisors.

DATES AND ADDRESSES: The public hearings will be held on January 23, 1992 in San Francisco, California at the Fort Mason Center, Building F ("The Firehouse"), and on March 6, 1992 in New York City, New York at the United States Courthouse, Foley Square, on both dates from 9:30 a.m. to 6 p.m., depending on requests for participation. Anyone desiring to testify should contact William Patry, Policy Planning Advisor to the Register of Copyrights, Copyright Office, by telephone (202) 707–8350 or fax transmission (202) 707–8366. For the January 23, 1992 San Francisco hearing, such requests should be received no later than January 16, 1992. For the March 6, 1992 New York City hearing, such requests should be received no later than February 21, 1992. All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: William Patry, Policy Planning Advisor to the Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707–8350.

SUPPLEMENTARY INFORMATION: On February 1, 1991 (56 FR 4110), the Copyright Office published in the Federal Register a Notice of Inquiry and Request for Information, seeking information in connection with a report to Congress on the question of artists' resale royalties that the Copyright Office is statutorily required to submit on June 1, 1992. The Copyright Office received a number of responses to this Request for Information. However, in order to afford artists, galleries, art dealers, museums, and others involved in the art market who might not otherwise have an opportunity to present their views, the Copyright Office has scheduled the above-referenced hearings. Those testifying should respond, as relevant to their particular situation, to the questions posed in the February 1, 1991 Request for Information.

Dated: January 3, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92–774 Filed 1–10–92; 8:45 am]

BILLING CODE 1410–07–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Acts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Arts Section) to the National Council on the Arts will be held on February 4, 1992 from 9:15 a.m.- p.m., February 5-6 from a.m.- p.m., and February 7 from 9:00 a.m.- p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 4 from 9:15 a.m.- p.m., and February 7 from p.m.- 5:30 p.m. The topics will be introductory remarks, general program overview, and policy discussion.

The remaining portions of this meeting on February 4 from 10:30 a.m.-p.m., February 5-6 from 9 a.m.-p.m., and February 7 from 9 a.m.-p.m. are for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and many be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 7, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-764 Filed 1-10-92; 8:45 am]

BILLING CODE 7537-01-M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Visual Arts Section) to the National Council on the Arts will be held on February 6, 1992 from 9:30 a.m.-5:30 p.m. and February 7 from 9:30 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 7 from 9:30 a.m.-5 p.m. The topics will be policy discussion and guidelines recommendations regarding the Advancement program and visual artists organizations.

The remaining portion of this meeting on February 6 from 9:30 a.m.-5:30 p.m. is for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 7, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-765 Filed 1-10-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; Revision to a System of Records

AGENCY: National Science Foundation.

ACTION: Notice of revised system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of a revision to NSF-12, "Fellowship and Traineeship Filing System." This system is being revised to better describe the system and to announce additional routine uses. The title is also being changed to "Fellowship and Other Awards" to reflect that change. The System is being printed in its entirety.

In accordance with Privacy Act requirements, NSF has provided a report on the proposed systems to the Director of OMB, the President of the Senate, and the Speaker of the House of Representatives.

EFFECTIVE DATE: Title 5 U.S.C. 552a(e)(4) and (11) require that the public be provided a 30-day period in which to comment on the routine uses of a system. This new routine use shall take effect without further notice on February 10, 1992, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESS: Written comments should be submitted to the NSF Privacy Act Officer, Division Human Resource Management, National Science Foundation, room 208, 1800 G Street, NW., Washington, DC 20550. All comments will be available for public inspection in Rm. 208, at the above address between the hours of 9 a.m. and 4 p.m.

Dated: January 7, 1992.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF-12

SYSTEM NAME:

Fellowships and other Awards.

SYSTEM LOCATION:

Decentralized. Numerous separate files are maintained by individual

offices and programs at the National Science Foundation, 1800 G Street, NW., Washington, DC. Others are maintained by NSF contractors such as the National Academy of Sciences (NAS), 2101 Constitution Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying or nominated for and/or receiving NSF support, either individually or through an academic institution, including fellowships or awards of various types.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on type of fellowship or award. Normally the information includes personal information supplied with the application or nomination; reference reports; transcripts and Graduate Record Examination scores to the extent required during the application process; evaluations and recommendations, review records and selection process results; administrative data and correspondence accumulating during fellows' tenure; and other related materials. There is a cumulative index of all persons applying for or receiving NSF and NATO fellowships.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A list of applicants for certain fellowships is sent to the Educational Testing Service, Princeton, NJ, for annotation of GRE scores and returned to NSF or its contractors for use in application review and processing.

2. Information from the system may be merged with other computer files in order to carry out statistical studies. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staff. The results of such studies are statistical in nature and do not identify individuals.

3. Disclosure of information from the system may be made to qualified reviewers for their opinion and evaluation of applicants or nominees as part of the application review process; to other Government agencies needing data regarding the names of applicants or nominees in order to coordinate programs; and to individuals assisting NSF staff, either through grant or contract, in the performance of their duties.

4. Certain information is given to the institution the applicant or fellow is attending or planning to attend for purposes of administration of fellowships or awards.

5. In the case of Fellows or awardees receiving stipends directly from the Government, information is transmitted to the Department of Treasury for preparation of checks or electronic fund transfer authorizations.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. Disclosure may be made to the Executive Office of the President to coordinate certain fellowships or awards.

8. Disclosures may be made to other Government agencies for the purpose of background checks for certain fellowships or awards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records kept by the NSF contractor are on computer tapes. All original application materials are kept at NSF. However, microfilms of application materials received prior to 1963 are kept at NAS.

RETRIEVABILITY:

Alphabetically by applicant's name.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained by NSF contractors are kept in similar rooms and some records are locked in cabinets.

RETENTION AND DISPOSAL:

NAS tapes are kept indefinitely. Records at NSF are transferred to the Federal Records Center and destroyed 10 years after completion of Fellowship.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613. It would expedite your request if the fellowship or award program about which you are interested is identified in your request. For example, indicate you applied for or received a "Graduate Fellowship" or a "Faculty Fellowship in Science" as opposed to merely saying you want a copy of your fellowship.

RECORD ACCESS PROCEDURE:

See "Notification" above.

CONTESTING RECORD PROCEDURE:

See "Notification" above.

RECORD SOURCE CATEGORIES:

Information supplied by individuals applying for or receiving support, references, the Education Testing Service, educational institutions supplying transcripts, review records and administrative data developed during selection process and award tenure.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NSF at 45 CFR 613.6 has claimed an exemption from disclosure for the identity of references and reviewers in accordance with 5 U.S.C. 552a(k)(5).

[FR Doc. 92-699 Filed 1-10-92; 8:45 am]

BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1991; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 14, No. 3 ("Report to Congress on Abnormal Occurrences: July-September 1991"). This report will be available in the NRC's Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

91-8 Radiation Exposures of Members of the Public From a Lost Radioactive Source

One of the AO examples notes that any loss of licensed material, in such quantities and under such circumstances that substantial hazard may result to persons in unrestricted areas, can be considered an abnormal occurrence.

Date and Place—September 5, 1991. The exposure occurred along an access road of Interstate 45 near Huntsville, Texas, from a source shipped by Western Atlas International from its Yukon, Oklahoma, facility.

Nature and Probable Consequences—On September 5, 1991, Western Atlas International (the licensee) notified the State of Texas that a 2-curie cesium-137 sealed well logging source had been lost that morning from the licensee's vehicle enroute from the licensee's Yukon, Oklahoma, facility to its Houston, Texas, facility.

The licensee initiated a search for the source using radiation detectors and retracted the route of the vehicle. Meanwhile, at approximately 5:30 p.m. on the same day, a citizen spotted the shipping container lying on the gravel shoulder about 30 feet from the southeast corner of the intersection of the Interstate 45 Exit 118 road and underpass road, and notified the Huntsville Police Department. A police officer was dispatched to the scene. The underpass road passes under Interstate 45 to a service road and truck stop. The shipping container evidently had fallen out of the truck as it was turning.

The radioactive source was found approximately 7 feet from its shipping container. The police officer picked up the source and is believed to have held it for about 5 seconds before dropping it approximately 6 to 12 inches from the container. The area was closed to the public until a member of the city's emergency management services retrieved the source using 2 knives as handling tools; at approximately 6:15 p.m., the source was placed back into the shipping container, which was missing its shield plug. Licensee personnel placed the source in a complete shipping container at approximately 7:30 p.m.

A large pin that is supposed to be attached to the safety bar securing the shipping container shield plug was determined to be missing. Without this pin, the safety bar could slide out of position, and the plug and source could come out of the shipping container.

In addition, the bed of the truck, from which the shipping container fell, was a flat steel deck with no obstructions at the rear of the truck except for a canvas cover held in place with four elastic straps. During transportation, several shipping containers were fastened on the truck bed by locks attached to the containers and to the 3/8-inch diameter links of a slack steel chain, which was attached to structural members of the truck. The chain did not surround the shipping containers, freeing them to move on the truck bed. Apparently, the slack allowed the shipping containers to accelerate when the vehicle turned corners, breaking a lock and allowing the subject shipping container to fall off the back of the truck.

The police officer who held the source received an estimated exposure of approximately 5 rem to his fingers. The individual who retrieved the source received an estimated exposure of approximately 150 millirem to his fingers.

Cause or Causes—The event was attributed to human error. Licensee personnel did not follow the licensee's procedures or management instructions in correcting shipping container deficiencies and in properly securing the shipping containers to the transporting vehicle.

Actions Taken To Prevent Recurrence

Licensee—On September 6, 1991, the day after the incident, the licensee issued a memorandum to all its North American facilities. This memorandum concerned corrective measures that were effective immediately. Subsequently, the licensee took additional corrective actions to prevent such losses.

NRC—On September 6, 7, and 11, 1991, NRC Region IV inspectors conducted a special, announced radiation safety inspection of the licensee's byproduct material program. The inspection included the review of organization, management, training, radiation protection, independent measurements, notification, and transportation activities. Seven apparent violations of NRC regulations were identified. Escalated enforcement action is under consideration.

* * * * *

91-9 Medical Diagnostic Misadministration at St. John's Mercy Medical Center in St. Louis, Missouri

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—September 9, 1991; St. John's Mercy Medical Center in St. Louis, Missouri.

Nature and Probable Consequences—A bone scan diagnostic study was scheduled for September 9, 1991, for a 15-month-old male child with possible osteomyelitis (bone inflammation) of the ankle. The child was given an adult dose of technetium-99m MDP, the radioactive pharmaceutical used for a bone scan. The normal dose for a child of his weight would be 1.91 millicuries. The standard adult dosage used for the diagnostic study was about 21.96 millicuries, more than 10 times the intended dosage to the child.

The licensee uses a computer system as an aid to determine the appropriate amounts of the radiopharmaceutical to use in the bone scan. For adult patients, there are standardized dosages; for patients under 18 years old, the dosages are calculated on the basis of body weight. The pediatric patients are identified on the licensee's treatment list with an asterisk, accompanied by a handwritten notation of the patient s body weight.

The radiopharmacist who prepared the technetium-99m MDP for the bone scan failed to note the asterisk and handwritten body weight on the computer printout of scheduled diagnostic studies. As a result, he prepared the standard adult dosage.

The nuclear medicine technician did not detect the error prior to administering the radiopharmaceutical to the patient. The technician checked the patient's name on the dose ticket accompanying the syringe, but did not verify the radiopharmaceutical and dosage, as required by hospital policy. After the administration, the technician noted the volume of the technetium-99m MDP was greater than expected, rechecked the dose ticket, and discovered the error.

The error did not negate the results of the diagnostic study and the bone scan was completed. Although the amount of radiation the child received was greater than intended, the licensee determined the increased risk of biologic effects was not significant. The calculated radiation dose for the study was about 4.4 rads to the bone and 1.3 rads to the total body. This compares to about 0.38 rads to the bone and 0.11 rads to the whole body had the correct dosage been administered.

Cause or Causes—The cause is attributed to human error on the part of the radiopharmacist and the nuclear medicine technician.

Actions Taken To Prevent Recurrence

Licensee—The hospital has counseled the two employees involved in the error. Hospital management met with the nuclear medicine department staff on September 17, 1991, to review the impact of the errors in this incident, to stress the importance of checking one's own work as well as the work of others, and to point out the need to follow department policies.

NRC—The NRC staff has reviewed the circumstance of the misadministration and will evaluate the licensee's corrective actions in a routine

inspection to be conducted in the next several months.

* * * * *

Dated at Rockville, MD this 6th day of January 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-771 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-50, issued to the GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI-1) located in Dauphin County, Pennsylvania.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 749 fuel assemblies to 1494 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated November 14, 1990, as supplemented June 6, June 14 and September 18, 1991. The NRC staff has prepared an Environmental Assessment of the Proposed Action.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For TMI-1, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or nonradiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80 kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only nonradiological impact affected by the spent fuel pool expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small in comparison to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated November 14, 1990, as supplemented June 6, June 14, and September 18, 1991, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Environmental Statement for the Three Mile Island Nuclear Station, Units 1 and 2 dated December 1972, and (4) the Environmental Assessment dated January 6, 1992.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 6th day of January 1992.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Director, Project Directorate I-4, Division Of Reactor Projects—I/II, Office of the Nuclear Reactor Regulation.

[FR Doc. 92-770 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3070-ML ASLBP No. 91-641-02-ML (Special Nuclear Materials License)]

Atomic Safety and Licensing Board; Before Administrative Judges: Morton B. Margulies, Chairman, Richard F. Cole, Frederick J. Shon Prehearing Conference

January 7, 1992.

In the Matter of Louisiana Energy Services, L.P. (Claiborne Enrichment Center).

Please take notice that a prehearing conference will be held in the captioned proceeding at 10 a.m. on January 21, 1992, in the Nuclear Regulatory Commission Hearing Room, Fifth Floor, 4350 East West Highway, Bethesda, Maryland.

The purpose of the prehearing conference is to discuss the setting of a schedule for further actions in the proceeding, including discovery, the narrowing of issues and taking similarly appropriate measures for moving the proceeding forward. Louisiana Energy Services, L.P. NRC Staff and Citizens Against Nuclear Trash are directed to appear at the conference.

It is so ordered.

Bethesda, Maryland January 7, 1992.

The Atomic Safety and Licensing Board.

Frederick J. Shon,

Administrative Judge.

Richard F. Cole,

Administrative Judge.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 92-773 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-31758-EA; ASLBP No. 92-656-01-EA]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

In the Matter of Randall C. Orem, D.O., Byproduct Material License No. 34-26201-01, EA 91-154.

This Board is being established pursuant to the request of Dr. Randall C. Orem for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated November 29, 1991, entitled

"Order Revoking License (Effective Immediately)" (56 FR 63986, December 6, 1991).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Law Judge Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Administrative Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108.
Administrative Judge Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 6th day of January 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-772 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 72-11, 50-312]

Sacramento Municipal Utility District; Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering an application dated October 4, 1991, for a materials license, under the provisions of 10 CFR part 72, from Sacramento Municipal Utility District (the applicant or SMUD) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Sacramento County, California. If granted, the license will authorize the applicant to store spent fuel in a dry storage system at the applicant's Rancho Seco Nuclear Generating Station (RSNGS) site (Operating License DPR-54). Pursuant to the provisions of 10 CFR part 72, the term of the license for the ISFSI would be twenty (20) years.

Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), the Commission's rules and regulations. The issuance of the materials license will not be approved until the Commission has reviewed the proposal and has concluded that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register.**

Pursuant to 10 CFR 2.105 and 2.1107, by February 12, 1992, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may, upon satisfactory completion of all evaluations, issue the materials license without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board up to 15 days prior to the holding of the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate in the conduct of the hearing.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards: Petitioner's name and telephone number; date petition was mailed; plant

name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jan Schori, Esq., Sacramento Municipal Utility District, P.O. Box 15830, Sacramento, California 95825-1830, General Counsel for the applicant.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a))1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this proceeding concerns an application for a license falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of NWPA, the Commission, at the request of any petitioner or any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provides for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," (published at 50 FR 41662, October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application dated October 4, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822. The Commission's license and Safety Evaluation Report, when issued may be inspected at the above locations.

Dated at Rockville, Maryland, this 6th day of January, 1992.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Source Containment and Devices Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[Docket No. 030-13584, License No. 52-01946-07, EA 91-089]

University of Puerto Rico, San Juan, PR; Order Imposing Civil Monetary Penalty

I

University of Puerto Rico (Licensee) is the holder of Broad Medical, Teletheraphy and Research and Development License Nos. 52-01946-07, 52-01946-09, 52-01984-04, 52-01986-01, 52-10510-04, 52-19434-02 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 3, 1978, March 8, 1990, March 18, 1969, February 13, 1957, August 15, 1978, and March 9, 1982, respectively. The licenses authorize the Licensee to use byproduct material in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on June 17-21, 1991. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 28, 1991. Section I of the Notice (Violations Assessed a Civil Penalty) states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations associated with License Number 52-01946-07. The Licensee responded to the Notice by letter dated September 27, 1991. In its response to the violations in Section I of the Notice, the Licensee admitted nine violations, partially admitted five violations (Violations I.E., I.G, I.I.3, I.I.4, and I.L), and denied one violation (Violation I.D). In addition, the Licensee requested that the amount of the civil penalty be reduced.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations, with the exception of Violation I.D., occurred as stated. With respect to Violation I.D., the NRC staff has determined that the violation should be withdrawn.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $5,830 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission requirements as set forth in Violations I.E., I.G., I.I.3., I.I.4, and I.L. of the Notice, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 30th day of December 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix: Evaluations and Conclusion

On August 28, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. The University of Puerto Rico responded to the Notice in a letter dated September 27, 1991. In its response to Section I (Violations Assessed a Civil Penalty), the licensee denied one violation (Violation I. D.) and admitted in part five violations (Violations I.E., I.G., I.I.3, I.I.4, and I.L.). In addition, the licensee requested a reduction of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violation I.D.

Condition 12.C. of License No. 52–01946–07 requires that licensed material for other than human use be used by, or under the supervision of, individuals designated by the Radiation Safety Committee.

Contrary to the above, on June 18, 1991, a researcher located in room 617A of the Medical Sciences Building was using sulfur 35 for other than human use and was not designated by the Radiation Safety Committee to do so, nor was he using the licensed material under the supervision of an individual designated by the Radiation Safety Committee. The researcher ordered and received licensed material under his own name and was not, at the time, conducting his research under the supervision of an individual designated by the Radiation Safety Committee.

Summary of Licensee's Response to Violation I.D.

The licensee denied that a researcher who was not designated by the Radiation Safety Committee had ordered, received and used licensed material. The licensee stated that during the NRC inspection the Radiation Safety Officer confused an unauthorized individual with an authorized individual having the same name, and thus, it appeared that an unauthorized individual had ordered and received licensed material when in fact it was ordered and received by an authorized individual. (The unauthorized individual was in fact working under the supervision of an authorized user.)

NRC Evaluation of Licensee's Response

The inspectors acknowledge that during the inspection, they were aware that there were two researchers with the same last name, and there was a possibility for confusion.

Therefore, the NRC is withdrawing this violation. Since the civil penalty was assessed equally among 15 violations, NRC is reducing the civil penalty by 1/15, or $420, based on the withdrawal of Violation I.D.

Restatement of Violation I.E.

10 CFR 35.70(b) requires the licensee to survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceutical waste is stored. 10 CFR 35.70(h) requires the licensee to retain a record of this survey with specific information for three years.

Contrary to the above, between April 3, 1990, and June 19, 1991, the licensee did not survey with a radiation detection survey instrument at least once each week in areas where radiopharmaceutical waste is stored.

Summary of Licensee's Response to Violation I.E.

The licensee denied that radiation surveys were not being made at least once each week in areas where radiopharmaceutical waste is stored but admitted that the Radiation Safety Officer failed to keep records of the results.

NRC Evaluation of Licensee's Response

During the inspection, the Radiation Safety Officer stated that he or someone from his office visited the radiopharmaceutical waste storage area weekly and carried a survey instrument. However, he indicated no measurements of radiation levels were performed in or around the radiopharmaceutical waste storage facility (restricted and unrestricted areas).

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.G.

10 CFR 35.22(a)(2) requires the Radiation Safety Committee to meet at least quarterly.

Contrary to the above, the Radiation Safety Committee failed to meet from December 20, 1989 through April 4, 1990, and from December 19, 1990 through April 3, 1991, periods in excess of one calendar quarter.

Summary of Licensee's Response to Violation I.G.

The licensee stated that the Radiation Safety Committee met four times each year during 1989 and 1990, but failed to meet during each calendar quarter which constituted only a deviation of 15 days.

NRC Evaluation of the Licensee's Response

10 CFR 35.22(a)(2) requires the Radiation Safety Committee meetings be held at least quarterly. The periods of the time between meetings (from December 20, 1989 through April 4, 1990, and December 19, 1990 through April 3, 1991) are in excess of one calendar quarter.

Therefore, the NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.I.3

Condition 20 of License No. 52–01946–07 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 29, 1988.

Attachment 8.2 of the licensee's application states that candidates for use of radioactive materials in research should submit evidence of training and experience equivalent to 40 hours of academic radiation disciplines including specific subjects.

Contrary to the above, on September 19, 1990, November 8, 1990 and November 30, 1990, candidates for use of licensed materials in research were approved without submitting evidence of training and experience equivalent to 40 hours of academic radiation disciplines.

Summary of Licensee's Response to Violation I.I.3

The licensee stated that most of the radioisotope users have been on-campus

for more than 10 years and have taken courses and on-the-job training in radioisotope handling at the Medical Sciences Campus, but no certificates have been issued, and that in the past it was not required to submit evidence of training.

NRC Evaluation of Licensee's Response

The licensee's procedures as written in Attachment 8.2 of the licensee's application dated August 29, 1988, require research candidates for use of radioactive material to submit evidence of training and experience equivalent to 40 hours of academic radiation disciplines including specific subjects. The researchers who were approved on September 19, 1990, November 8, 1990 and November 30, 1990, were new candidates for use of materials, and no evidence of training and experience equivalent to 40 hours of academic radiation disciplines, including specific subjects, was submitted prior to their approvals.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.I.4

Condition 20 of License No. 52-01946-07 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 29, 1988.

Attachment 10.12 of the licensee's application states that the licensee will establish and implement the model procedure for area surveys that was published in appendix N to Regulatory Guide 10.8, Revision 2 (August 1987). Item 1.e (Records) of appendix N specifies that the licensee will keep records which include actions taken in the case of excessive dose rates or contamination and follow up survey information.

Contrary to the above, as of June 18, 1991, records of surveys performed in the research laboratories did not indicate the actions taken and followup survey information for cases involving excessive dose rates or contamination.

Summary of Licensee's Response to Violation I.I.4

The licensee partially admitted the violation and stated that when high dose rates or contamination were detected, areas were initially surveyed and decontaminated until dose rates reached approved levels; however, the licensee failed to keep records of the action taken.

NRC Evaluation of Licensee's Response

This citation was not for failing to survey or decontaminate areas, but rather for not retaining records of actions taken and follow up survey information for cases involving excessive does rates or contamination. The licensee admitted that it had not kept these records.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.L.

10 CFR 35.59(d) requires the licensee to retain leak test records for five years which contain specified information for all sources tested.

Contrary to the above, as of June 17, 1991, records of leak tests were not maintained for sixteen cesium 137 sources received in August 1990.

Summary of Licensee's Response to Violation I.L.

The licensee stated that the sealed sources were leak tested as required, but the new cesium 137 sources were not clearly identified in the form used as a permanent record.

NRC Evaluation of Licensee's Response.

This citation was not for failing to leak test sealed sources, but rather for not maintaining leak test records as required. The licensee's leak test records did not identify the sources tested and did not contain the specified information on the sixteen cesium 137 sources received in August 1990.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Summary of Licensee's Request for Mitigation.

The licensee stated that, as of September 27, 1991, more than 75 percent of the violations had already been corrected, and that in order to develop a stronger Radiation Safety Program, the University of Puerto Rico has initiated the acquisition of personnel, equipment and materials. The licensee requested that, for those reasons, the NRC consider reducing the amount of the proposed civil penalty.

NRC Evaluation of Licensee's Request for Mitigation.

Corrective actions are always required for identified violations. As stated in the NRC letter dated August 28, 1991, neither escalation nor mitigation was warranted for corrective action to prevent recurrence because, at the time of the enforcement conference, even though immediate corrective actions had been taken for some of the violations, adequate long-term corrective action to address the root cause issues had not been formulated and implemented. Therefore, NRC concludes that the licensee has not provided a sufficient basis for mitigation of the proposed civil penalty.

NRC Conclusion

The NRC has concluded that, with the exception of Violation I.D., the violations occurred as stated, and that the licensee has not provided a sufficient basis for any mitigation of the civil penalty. However, based on the withdrawal of Violation I.D., a reduction of the civil penalty in the amount of $420 is warranted.

Consequently, a civil penalty in the amount of $5,830 should be imposed.

Enclosure 2: Evaluation of Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the licensee admitted nine of the 13 violations (Violations II.3.(a), II.3.(b), II.4., II.A, III.B., IV.A.1., IV.A.2., IV.A.3., and IV.B), denied one violation in its entirety (Violation III.C), and admitted in part three violations (Violations II.1., II.2., and IV.A.4.).

Restatement of Violation III.C.

10 CFR 20.203(e) requires that rooms or areas in which specified amounts of licensed material are used or stored by conspicuously posted "Caution—Radioactive Material."

Contrary to the above, on June 20, 1991, a refrigerator which contained eleven vials of carbon 14 ranging from 50 to 386 microcuries per vial and which was located in an open hallway was not posted as required.

Summary of Licensee's Response to Violation III.C.

The licensee denied that posting was required for this refrigerator. The licensee stated that the activities of carbon 14 stored in a refrigerator at the Agricultural Experiment Station and recorded by the inspector were misread on the container labels during the NRC inspection. By checking old papers on the containers, the licensee found that the total activity stored in the refrigerator was less than 0.8 millicuries of carbon 14; therefore, the refrigerator did not require a sign warning "Caution—Radioactive Material" in accordance with 10 CFR 20.203(e), which requires posting for more than one millicurie of carbon-14.

NRC Evaluation of Licensee's Response

The inspector agrees that the labels on the containers were difficult to read.

Since the licensee was able to check old papers after the inspection and determined that the total activity in the refrigerator was less than 0.8 millicuries, then the refrigerator would not require posting in accordance with 10 CFR 20.203(e).

Accordingly, Violation III.C is withdrawn.

Restatement of Violation II.1.

Condition 15 of License No. 52-01986-04 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application received November 9, 1989, and letter dated July 24, 1990.

Procedure 5.c. of Item 10 of the licensee's application states that the surface of the source container will be checked for contamination using a cotton swab when initially opening packages containing radioactive material.

Contrary to the above, as of June 20, 1991, the surface of source containers received in Room JGD 217 were not being checked for contamination when initially opening packages containing material.

Summary of Licensee's Response to Violation II.1.

The licensee stated that the incoming packages were checked for contamination but negative results were not recorded.

NRC Evaluation of Licensee's Response

Based on a telephone conversation between the Radiation Safety Office and an inspector on November 4, 1991, it is our understanding that there was a misunderstanding as to what constituted the required surveys on incoming packages. The researcher in Room JGD 217 indicated to the Radiation Safety Officer that he was performing the required surveys and not recording negative results. However, the Radiation Safety Officer indicated that the researcher had been surveying the exterior surface of the incoming packages for radiation levels but had not performed the required checks for contamination on the surface of the source containers when initially opening the packages.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation II.2.

Condition 15 of License No. 52-01986-04 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application received November 9, 1989, and letter dated July 24, 1990.

Procedure 5.d. of Item 10 of the licensee's application states that the Radiation Safety Technician is to be notified upon receipt of material.

Contrary to the above, as of June 20, 1991, the Radiation Safety Technician had not been notified of all receipt of material in Rooms JGD 107 and JGD 216.

Summary of Licensee's Response to Violation II.2.

The licensee stated that the violation was due to a misunderstanding of the use of the form employed to notify the RSO. The licensee stated that the personnel in Room JGD 107 always notified the Radiation Safety Technician (RST) by telephone of receipt of material and the personnel in Room JGD 216 always notified the RST in writing and not by telephone. The licensee also stated that the notification forms are available in the RST's files.

NRC Evaluation of Licensee's Response

The information provided to the NRC inspectors concerning not notifying the RST was obtained through interviews with personnel in the laboratories during the inspection. There is a possibility that other personnel in the laboratory who were not present during the inspection may have notified the RST of receipt of these materials, and since the RST has forms in his files which demonstrate that he was notified, we agree with the licensee's conclusion that Item II.2. did not constitute a violation.

Accordingly, Violation II.2 is withdrawn.

Restatement of Violation IV.A.4.

Condition 20 of License No. 52-10510-04 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 9, 1983, which includes the licensee's Radiation Safety Regulations Manual, and letter dated April 11, 1986.

The licensee's letter dated April 11, 1986, states that the Radiation Safety Committee will meet no less than once each fiscal year.

Contrary to the above, the Radiation Safety Committee failed to meet during the fiscal year 1989.

Summary of Licensee's Response to Violation IV.A.4.

The licensee stated that the Radiation Safety Committee met at least once each year, including 1989; however, no record of the meeting held in 1989 had been kept.

NRC Evaluation of Licensee's Response

At the time of the inspection, there were minutes for other Radiation Safety Committee meetings, but no minutes for a meeting held during fiscal year 1989. Also, through interviews with the Radiation Safety Officer, it was determined that no Radiation Safety Committee meeting was held during fiscal year 1989.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

NRC Conclusion

The NRC concludes that the licensee provided an adequate basis for withdrawal of Violations II.2. and III.C. of the Notice of Violation dated August 28, 1991. Consequently, Violations II.2 and III.C are withdrawn. However, the NRC concludes that the licensee did not provide an adequate basis for withdrawal of any additional violations. Therefore, the NRC concludes that Violations II.1. and IV.A.4. occurred as stated in the Notice.

[FR Doc. 92-768 Filed 1-10-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-602]

University of Texas; Order Extending Construction Completion Date

The University of Texas is the current holder of Construction Permit No. CPRR-123, issued by the U.S. Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On September 24, 1991, the University of Texas (UT or the applicant) filed a request for an extension of the construction completion date from October 31, 1991, to December 31, 1991. The extension has been requested to allow the NRC staff to review documentation to support issuance of the Facility Operating License. To allow the staff sufficient time to complete the license issuance review, the staff has extended the construction completion date to March 31, 1992.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion

date will have no significant impact on the environment (57 FR 71, dated January 2, 1992).

The NRC staff' safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20055.

It is hereby ordered That the latest completion date for Construction Permit No. CPRR-123 is extended from October 31, 1991, to March 31, 1992.

Date of Issuance: January 6, 1992.

For the Nuclear Regulatory Commission.

William D. Travers,

Acting Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92-769 Filed 1-10-92; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30154; File No. SR-MSE-91-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to the Waiver of Certain Exchange Transaction Fees for Transactions in Tape B Eligible Issues

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to extend the waiver of transaction fees, set out in section (c) of the Transaction Fee Schedule of its Membership Dues and Fees, to transactions in Tape B eligible issues.[1] This waiver applies only to firms sending orders in Tape B eligible securities to the Exchange floor. The Exchange waived these fees through December 31, 1991.[2] The MSE now proposes to extend this waiver through December 31, 1992.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basic for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities in order to enhance the Exchange's competitive position in these issues.

The proposed rule change is consistent with section 6(b)(4) of the Act in that the waiver of these fees does not affect the existing equitable allocation of dues, fees, and other charges among Exchange members using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-91-17 and should be submitted by February 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-778 Filed 1-10-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), complies current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American ("Amex"), Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc. Transactions in Amex-listed stocks and qualifying regional listed stocks are reported on CTA Tape B. Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 (January 7, 1985).

[2] See Securities Exchange Act Release No. 28916 (February 25, 1991), 56 FR 9028 (March 4, 1991) (File No. SR-MSE-91-7). Previously, the MSE waived these fees for the time period August 31 through December 31, 1990. See Securities Exchange Act Release No. 28402 (August 31, 1990), 55 FR 37389 (September 11, 1990) (File No. SR-MSE-90-14). The Commission did not receive any comments on either of these filings.

[3] The exact text of the proposed rule change was attached to the rule filing as exhibit A and is available at the MSE and the Commission at the address noted in Item IV below.

[Release No. 34-30153; File No. SR-NYSE-91-37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Arbitration Procedures.

January 6, 1992.

I. Introduction

On October 24, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change designed to amend certain of the Exchange's series of rules that govern the administration of its arbitration forum. The NYSE states that the proposed rule change is based for the most part on proposals developed by the Securities Industry Conference on Arbitration.

The proposed rule change was noticed in Securities Exchange Act Release No. 29975 (November 21, 1991), 56 FR 60142 (November 27, 1991). No comments were received on the proposal.

II. Description of the Proposal

1 Rule 600: General Provisions Governing Arbitration

The NYSE proposes to adopt rule 600(c) to provide that arbitration claims which arise out of a readily identifiable market may, with the consent of the claimant, be referred to the arbitration forum for that market by the NYSE. The NYSE states that the purpose of this amendment is to provide for a more efficient allocation of claims among the various self-regulatory organizations ("SROs").

2. Rule 601: Simplified Arbitration

The NYSE proposes several amendments to its rules governing simplified arbitration proceedings. First, the NYSE proposes to amend rule 601(a) to codify the practice of the Exchange in applying simplified arbitration procedures to claims under $10,000 without the demand or written request of the customer In addition, the proposed amendment to rule 601(d) would clarify the respondent's responsibilities for the service of documents in simplified arbitration proceedings. The current rule provides that if a respondent raises a third party claim, the respondent shall serve the third party claim and a copy of the original claim filed by the claimant. As amended, rule 601(d) would require that if a respondent has raised a third party claim, the respondent shall serve the third party respondent with an executed Submission Agreement and a copy of respondent's answer containing the third party claim as well as a copy of the original claim filed by the claimant.

The NYSE also proposes to amend its rule 601(h) to adopt two provisions governing discovery in simplified arbitration proceedings. New rule 601(h)(ii) would codify the applicability of the Exchange's current discovery procedures, as set forth in NYSE Rule 619, to simplified arbitrations when a public customer demands a hearing. New rule 601(h)(iii) would establish a procedure by which an arbitrator may resolve discovery disputes over the production of documents in simplified arbitrations where no hearing has been demanded. Specifically, proposed rule 601(h)(iii) would provide that all requests for document production be submitted to the Director of Arbitration within ten business days of notification of the identity of the arbitrator selected to decide the case. The requesting party also would serve simultaneously its requests for document production on all parties. The rule would require that any response or objection to the request for document production be served on all parties and with the Director of Arbitration within five business days of receipt of the request for production. Finally, the rule would require that the selected arbitrator resolve all requests for document production on the papers submitted.

3. Rule 609: Peremptory Challenge

The NYSE proposes to amend rule 609, governing peremptory challenges in an arbitration proceeding, to specify when a party may exercise a peremptory challenge. The current rule requires that a party who wishes to exercise a peremptory challenge must notify the Director of Arbitration in writing within five business days of notification of the identity of persons named to the panel, unless this time period is extended by the Director of Arbitration. Amended rule 609 would provide that, unless this time period is extended by the Director of Arbitration, a party who wishes to exercise a peremptory challenge must follow the above procedures within five business days of notification of the identity of the persons named under rule 619(d), Pre-hearing Conference, rule 619(e), Decisions by Selected Arbitrator, or rule 608, Notice of Selection of Arbitrators, whichever occurs first.

4. Rule 616: Failure To Appear

The NYSE proposes to amend rule 616 to clarify the authority of arbitrators to proceed with an arbitration when a party fails to appear at a hearing. The current rule permits arbitrators, in their discretion, to proceed with an arbitration if any of the parties, after due notice, fails to appear at a hearing, or any adjourned hearing session. Amended rule 616 would delete the reference to any adjourned hearing session and clarify that the arbitrators also may proceed with an arbitration under this rule when a party fails to appear at the continuation of a hearing session.

5. Rule 625: Amendments

The NYSE proposes to amend rule 625(a) to require that parties submitting amended pleadings provide the Director of Arbitration with sufficient additional copies of the amended pleadings for each arbitrator Current rule 625(a) requires that the Director of Arbitration serve all parties with amended pleadings. The NYSE proposes to require parties filing a new or different pleading to serve directly all other parties with the amended pleading in accordance with rule 612(b), Service and Filing with the Director of Arbitration. In addition, amended rule 625(a) would require the parties answering amended pleadings to serve directly all other parties and the Director of Arbitration with their responsive pleadings in accordance with rule 612(b). The NYSE states that the proposed amendments to rule 625 would conserve arbitral resources and shorten the time required by the pleadings stage by requiring the parties to serve amended pleadings.

6. Rule 627: Awards

The NYSE proposes to amend rule 627(e) to require that an arbitration award include, in addition to the information required by the current rule, the names of counsel representing the parties and the type of product or security involved in the arbitration. The NYSE also proposes to amend rule 627 (g) to consolidate current rules 627(g) and (h) and to clarify when interest is payable on an award. The current rule provides that arbitrators may award interest as they deem appropriate. The rule also provides that all awards shall bear interest from the date of the award until payment. Amended rule 627(g) would continue to require payment of awards within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. The proposed rule change, however, would revise the rule's current

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

requirement for payment of interest on awards from the date of the award if: (1) The award shall bear interest from the date of the award. The rule would provide that an award is not paid within thirty days of receipt; (2) the award is the subject of a motion to vacate which is denied; or (3) the arbitrators otherwise so specify in the award.

III. Discussion and Conclusion

The Commission has considered carefully the NYSE's proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, with the requirements of section 6(b)(5) of the Act.[3] Section 6(b)(5) of the Act requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that because these rules will aid in the just resolution of disputes between investors and broker-dealers, the proposal should further the objectives of section 6(b)(5) of the Act. The Commission also believes, for the reasons set forth below, that the proposed rule change significantly advances the public interest in Exchange arbitrations and should improve the speed and efficiency of the arbitration process, while at the same time maintaining the traditional qualities of arbitration.

More specifically, the Commission believes that the proposed amendment to rule 600, which will permit the NYSE to refer, with the claimant's consent, arbitration claims which arise in a readily identifiable market to the arbitration forum for that market should provide for a more efficient allocation of claims among the various SROs. This, in turn, should result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of the parties' disputes.

The Commission believes that the proposed amendments to rule 601, Simplified Arbitration, should improve the procedures for administering arbitration cases involving small claims. The proposed amendment to rule 601(a) simply codifies the NYSE's practice of applying simplified arbitration procedures to claims under $10,000 without the demand or written request of the customer The NYSE's formal adoption of this practice as a rule of the Exchange should clarify application of the rule and provide notice to the parties of the automatic application of the simplified arbitration procedures to cases involving small claims. Similarly, the proposed amendment to rule 601(d) would clarify the respondent's responsibilities for the service of documents in the event that the respondent raises a third party claim and would require that the respondent, rather than the Exchange, serve the third party respondent with the executed Submission Agreement and other documents required by the rule. The proposal, therefore, should save administrative time and costs while continuing to ensure that third party respondents receive adequate notice of the institution of the arbitration proceedings. Finally, the proposed adoption of rule 601(h)(ii), governing discovery when a public customer demands a hearing, and rule 601(h)(iii), governing discovery where no hearing has been demanded, should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits.

The Commission also believes that the proposed amendment to rule 609, Peremptory Challenge, should clarify the time requirements for the exercise of peremptory challenges in arbitration proceedings. Because amended rule 609 would provide that parties who wish to exercise peremptory challenges must follow the procedures set forth in the rule following the notification of persons named under NYSE Rule 619(d), Pre-hearing Conference, rule 619(e), Decisions by Selected Arbitrator, or rule 608, Notice of Selection of Arbitrator, whichever occurs first, the proposal should provide parties with clear guidelines regarding the time limitations applicable to peremptory challenges. As a result, the proposed rule change should contribute to the prompt resolution of the parties' disputes.

Moreover, the Commission believes that the proposed amendments to rule 616, Failure to Appear, and rule 625(a), Amendments, should improve the efficiency and speed of arbitration. Because the amendment to rule 616 would clarify the authority of arbitrators to proceed with an arbitration if a party, after due notice, fails to appear at the continuation of a hearing session, the proposal should eliminate unnecessary delays in the arbitration proceedings and should assist in the prompt resolution of arbitration claims. The Commission believes that the proposed amendments to rule 625(a), which would revise the procedures for the submission and service of amended pleadings, should save administrative time and costs and continue to ensure that all parties to an arbitration receive prompt notice of the amended pleadings.

The Commission believes that the proposed amendment to rule 627(e), Awards, should enhance investor participation in the arbitration system by increasing public access to information regarding prior arbitration decisions. Proposed rule 627(e) would expand the content of arbitration awards to include the names of counsel representing the parties and the type of product or security involved in the arbitration. As a result, the Commission believes that rule 627(e) should afford more public access to information regarding the arbitration process and advance the utility of arbitration awards for public investors.

The Commission also believes the proposed amendments to rule 627(g), which governs the payment of interest on awards, should improve the procedures for administering arbitration proceedings. Because the proposal generally would require the payment of awards within thirty days of receipt of the award, the proposal is designed to allow a reasonable period of time for administrative processing of award payments without the payment of interest. At the same time, the proposal should provide an incentive for the paying party to comply with the payment of the award within thirty days. As a result, the Commission believes that the proposal should encourage prompt payment of arbitration awards and increase investor confidence in the arbitration process.

The Commission also believes that it is appropriate for the rule to continue to require that all monetary awards be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. This provision should preserve the paying party's ability to seek review of the award in court while postponing temporarily the payment of that award under the requirements of the NYSE's rule. Conversely, because the proposal provides that an award shall bear interest from the date of the arbitration award if the award was the subject of a motion to vacate that is denied by a court, the proposal should help to protect the payee s interest in the receipt of an arbitration award without unreasonable or unjustifiable delay.

Finally, the Commission believes that it is appropriate to allow arbitrators discretion in awarding interest on the payment of awards from the date of the award. This provision should help the arbitrators to design an award that fully,

[3] 15 U.S.C. 78f(b)(5) (1988).

fairly and promptly compensates a party for economic damages incurred.

For these reasons, the Commission finds that the NYSE's proposed amendments to its arbitration rules appropriately balance the need to strengthen investor confidence in the NYSE's arbitration system with the need to maintain arbitration as a form of dispute resolution that provides for the equitable and efficient administration of justice in a manner consistent with section 6(b)(5) of the Act.

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-723 Filed 1-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30155; File No. SR-NYSE-91-45]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Adoption of Rule 410B Concerning Reporting to the Exchange of Transactions Effected in Exchange-Listed Securities

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt rule 410B which will require Exchange members and member organizations ("members") to report to the Exchange transactions effected for their accounts or accounts of their customers in Exchange-listed stocks that are not otherwise reported to the Consolidated Tape.[1]

[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30-3(a)(12) (1990).

[1] The exact text of the proposal was attached to the rule filing as exhibit A and is available at the NYSE and the Commission at the address noted in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Currently, transactions in NYSE-listed stocks effected on the Exchange, another U.S. securities exchange, or over-the-counter during the hours of operation of the Consolidated Tape [2] are reported to an SRO either immediately or within a short time frame (*e.g.*, 90 seconds after the transaction) for dissemination to the Consolidated Tape. Transactions effected at other times are not reported to the Consolidated Tape, and, with the exception of program trading information, are not reported to the Exchange.

The Exchange believes that all transactions in NYSE-listed stocks not reported to the Consolidated Tape should be reported to the Exchange in order to provide an accurate record of overall trading activity in NYSE-listed stocks. The Exchange believes that the proposed rule will augment and enhance its ability to surveil for and investigate, among other matters, insider trading, frontrunning, and manipulative activities, such as marking the close of the NYSE prior to the effecting of trades in another market. In addition, the information obtained by means of proposed rule 410B can be expected to provide a clearer picture than currently exists as to the extent of off-hours trading in NYSE-listed stocks, and will thus facilitate the Exchange s planning of appropriate initiatives to meet the needs of its members in this area.

Proposed rule 410B requires that members report the following information:

(1) Time and date of the transaction;

(2) Stock symbol of the listed security;

(3) Number of shares;

(4) Price of the transaction;

(5) Marketplace where the transaction was executed;

(6) An indication whether the transaction was a buy (B), sell (S), or cross (C);

(7) An indication whether the transaction was executed as principal or agent; and

(8) The name of the contra-side broker-dealer to the trade.

Proposed rule 410B contains the following exceptions:

(1) Program trading information that is otherwise reported to the Exchange;

(2) Odd-lot transactions;

(3) Transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than "self distributions") or an unregistered secondary distribution effected off the floor of an exchange;

(4) Transactions made in reliance on section 4(2) of the Securities Act of 1933; [3]

(5) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, (*e.g.*, to enable the seller to make a gift);

(6) The acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

(7) Purchases of securities off the floor of an exchange pursuant to a tender offer.

Reporting will be required on a next business day basis via electronic systems designated by the Exchange.

The Exchange is obtaining information pursuant to rule 410B for regulatory purposes, and will therefore keep this information confidential, and will not make it publicly available as to any specific transaction. The Exchange may, however, determine to disseminate aggregate data as to the extent of off-hours trading.

[2] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc.

[3] Section 4(2) exempts transactions by an issuer not involving any public offering from the prohibitions relating to interstate commerce and the mails contained in section 5 of the Securities Act of 1933. 15 U.S.C. 77d(2) (1988).

(2) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed rule change will enhance the Exchange's surveillance capabilities with respect to trading activity in listed securities and is thus consistent with protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-45 and should be submitted by February 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-779 Filed 1-10-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2545]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 26, 1991, I find that Bastrop, Bosque, Brown, Dallas, and Travis Counties in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and flooding beginning on December 20, 1991 and continuing. Applications for loans for physical damage may be filed until the close of business on February 24, 1992, and for loans for economic injury until the close of business on September 28, 1992 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Blanco, Burnet, Caldwell, Callahan, Coleman, Collin, Comanche, Coryell, Denton, Eastland, Ellis, Erath, Fayette, Gonzales, Hamilton, Hays, Hill, Johnson, Kaufman, Lee, McCulloch, McLennan, Mills, Rockwall, San Saba, Somervell, Tarrant, and Williamson in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254506 and for economic injury the number is 750600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 2, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-705 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0294]

Revelation Resources, Ltd.; Surrender of License

Notice is hereby given that Revelation Resources, Ltd., 910 Travis Street, suite 2411, Houston, TX 77002 has surrendered its License to operate as a small business investment company under the Small Business Act of 1958, as amended (Act). Revelation Resources, Ltd. was licensed by the Small Business Administration on January 12, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 16, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 20, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-704 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5385]

Sowa Capital Corp.; License Surrender

Notice is hereby given that Sowa Capital Corporation, 429 S. Euclid Street,

suite A, Anaheim, California, has surrendered its license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958, as amended (the Act). Sowa Capital Corporation was licensed by the Small Business Administration on April 7, 1990.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the licensee was accepted on December 20, 1991 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 31, 1991

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-703 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Tuesday, January 21, 1992, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Mr. Andrew Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850, (808) 541-2990.

Dated: January 3, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-707 Filed 1-10-91 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Raleigh, will hold a public meeting from 10 a.m. to 3 p.m., on Wednesday, January 29, 1992, at the Marriott Research Triangle Park Hotel, Durham, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Gary A. Keel, District Director, U.S. Small Business Administration, 200 N. College Street, suite A-2015, Charlotte, North Carolina 28202-2173, (704) 344-6563.

Dated: January 3, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-706 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1554]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.6(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703-875-6650).

SUPPLEMENTARY INFORMATION: Section 38 (g)(4)(A) of the Arms Expert Control Act (AECA) prohibits the issuance of export licenses to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

Section 127.6 of the ITAR authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons convicted of violating or conspiracy to violate the AECA from participating directly or indirectly in the export of defense articles or in the furnishing of defense services.

Such a prohibition is referred to as a statutory debarment, which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.6(c). The period for debarment will normally be three years. The ITAR provides the Assistant secretary with discretion to determine an alternative period of time for debarment. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4).

Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, those procedures of part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

During the period of debarment the Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating the AECA, or of conspiracy to violate the AECA. Persons who have been statutorily debarred may appeal to the Under secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision.

The Department of state policy permits debarred persons to apply for an exception from the debarment under section 38 (g)(4)(A) of the AECA, one year after the date of the debarment. Debarred persons may seek such an exception from the Director of the Office of Defense Trade Controls, in accordance with section 38 (g)(4)(A) and under 22 CFR 127.6. If the exception is granted, the debarment will be suspended. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) have been satisfied.

Pursuant to section 38 (g)(4)(A) of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military Affairs has debarred eight persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA.

These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to section 127.6(c) of the ITAR, the names of these persons (and their offense, date of conviction(s) and court of conviction(s)) are being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291 (44 FR 13193). It implements statutory and regulatory requirements that entered into force on December 22, 1987 and April 4, 1998, respectively.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/offense/ date/ court):

1. H. Leonard Berg, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, June 23, 1989, Eastern District of New York.

2. Ernesto Botifoll, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), July 14, 1989, Southern District of Florida.

3. Bernhard Bowitz, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), March 17, 1989, District of Nevada.

4. Grimm Depanicis, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, September 15, 1989, Eastern District of New York.

5. Leon Albert Lisbona, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, June 23, 1989, Eastern District of New York.

6. Solomon Schwartz, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, June 23, 1989, Eastern District of New York.

7. Ali Reza Foyuzi Yousefi, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, July 26, 1989, District of South Carolina, Rock Hill Division.

8. Juwhan Yun, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), September 18, 1989, District of New Jersey.

Dated: January 7, 1992.

William B. Robinson,

Director Office of Defense Trade Controls, Bureau of Politico Military Affairs, Department of State.

[FR Doc. 92-782 Filed 1-10-92; 8:45 am]

BILLING CODE 4710-25-M

[Public Notice 1548]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 4, 1992 at 9:30 a.m. in room 1105 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting will include items necessary to begin the preparatory activities for the upcoming Xth CCITT Plenary Assembly (Standardization Conference) scheduled for Espoo, Helsinki, Finland, March 1-12, 1993, general issues concerning organization, study program, and the final meetings of all Study Groups.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Earl Barbely, Department of State, (202) 647-2592, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: December 26, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT, National Committee.

[FR Doc. 92-720 Filed 1-10-92; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1547]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D Meeting; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 31, 1992 at 10 a.m. in room 1912 and on March 24, 1992 at 10 a.m. in room 1205 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The purpose of the meetings will be to review U.S. contributions for the April meetings of Study Groups VII and VIII, the June meeting of Study Group XVII, and to consider any other business within the scope of Study Group D. The Meetings will also consider proposals for the work program questions to be studied during the next four year plenary period.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Gary Fereno, Department of State, (202) 647-0201, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: December 26, 1991.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT, National Committee.

[FR Doc. 92-721 Filed 1-10-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Subcommittee; Transport Airplane and Engine Subcommittee; Flight Test Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Flight Test Working Group.

SUMMARY: Notice is given of the establishment of a Flight Test Working Group by the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR-3) 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAC: (202) 267-9562.

SUPPLEMENTARY INFORMATION:

The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at the meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport category airplanes and engines in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, 35). At its meeting on September 26, 1991 (56 FR 43055, August 30, 1991), the subcommittee agreed to establish the Flight Test Working Group. Specifically, the working group's task is the following:

Task

The Flight Test Working Group is charged with making a recommendation to the Transport Airplane and Engine Subcommittee concerning disposition of the joint Aerospace Industries Association of America, Inc. (AIA) and Association Europenne des Constructeurs de Material Aerospatial (AECMA) petition for rulemaking dated May 22, 1990, requesting amendments to §§ 25.143(c) and (f), 25.149, and 25.201 of the Federal Aviation Regulations (Docket No. 26250). In completing this task, the working group should review comments received in response to this petition.

Reports

The working group will develop any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing the requested or modified new standards, supporting economic and other required analysis, and any other collateral documents the working group determines are needed; or

2. A Denial of Petition stating the rationale for not adopting the new standards proposed in the petition.

The working group chair or an alternate should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for February 4, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee before proceeding with the drafting of documents described in paragraphs 1 and 2 above.

The Flight Test Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Flight Test Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-755 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Subcommittee; Fuel Indicators Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Fuel Indicators Working Group.

SUMMARY: Notice is given of the establishment of a Fuel Indicators Working Group by the General Aviation and Business Airplane Subcommittee. This notice informs the public of the activities of the General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, General Aviation and Business Airplane Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The General Aviation and Business Airplane Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for standard and commuter category airplanes and engines in part 23 of the Federal Aviation Regulations, and parallel provisions of parts 91 and 135 of the Federal Aviation Regulations. At its first meeting on November 5, 1991 (56 FR 54605; October 22, 1991) the subcommittee established the Fuel Indicators Working Group. Specifically, the working group's task is the following:

Task

The Fuel Indicators Working Group is charged with making a recommendation to the General Aviation and Business Airplane Subcommittee concerning disposition of the Aircraft Owners and Pilots Association (AOPA) petition for rulemaking dated July 16, 1990, requesting amendments to § 23.1305(g) of the Federal Aviation Regulations (Docket No. 26281) to allow use of differential fuel pressure transducer flow-indicating devices. In completing this task, the working group should review comments received in response to this petition.

Reports

The working group will develop any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing the requested or modified new standards, supporting economic and other required analysis, and any other collateral documents the working group determines are needed; or

2. A Denial of Petition stating the rationale for not adopting the new standards proposed in the petition.

The working group chair or an alternate should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for January 29, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee before proceeding with the drafting of documents described in paragraphs 1 and 2 above.

The Fuel Indicators Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent General Aviation and Business Airplane Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Fuel Indicators Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-756 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Subcommittee; Accelerated Stalls Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Accelerated Stalls Working Group.

SUMMARY: Notice is given of the establishment of an Accelerated Stalls Working Group by the General Aviation and Business Airplane Subcommittee. This notice informs the public of the activities of the General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, General Aviation and Business Airplane Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The General Aviation and Business Airplane Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for standard and commuter category airplanes and engines in part 23 of the Federal Aviation Regulations, and parallel provisions of parts 91 and 135 of the Federal Aviation Regulations. At its first meeting on November 5, 1991 (56 FR 54605; October 22, 1991), the subcommittee established the Accelerated Stalls Working Group.

Specifically, the working group's task is the following:

Task

The Accelerated Stalls Working Group is charged with making a recommendation to the General Aviation and Business Airplane Subcommittee concerning disposition of the Fairchild Aircraft Corporation petition for rulemaking dated July 16, 1990, requesting amendments to § 23.203(a)(2) of the Federal Aviation Regulations (Docket No. 26143) concerning accelerated stalls. In completing this task, the working group should review comments received in response to this petition.

Reports

The working group will develop any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing the requested or modified new standards, supporting economic and other required analysis, and any other collateral documents the working group determines are needed; or

2. A Denial of Petition stating the rationale for not adopting the new standards proposed in the petition.

The working group chair or an alternate should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for January 29, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee before proceeding with the drafting of documents described in paragraphs 1 and 2 above.

The Accelerated Stalls Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent General Aviation and Business Airplane Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Accelerated Stalls Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No

public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-757 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Emergency Evacuation Subcommittee; Performance Standards Working Group—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Performance Standards Working Group.

SUMMARY: Notice is given of a new task assignment for the Performance Standards Working Group from the Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Emergency Evacuation Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Emergency Evacuation Subcommittee was established at that meeting to provide advice and recommendations to the Directors, FAA Aircraft Certification and Flight Standards Services, on regulatory standards for the purpose of enhancing the ability of passengers to quickly and safely evacuate an aircraft in an emergency. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Performance Standards Working Group, and assigned it a task (56 FR 31993; July 12, 1991). At the subcommittee meeting held on November 21, 1991 (56 FR 58113; November 11, 1991), at Oklahoma City, OK, the subcommittee assigned an additional task to the Performance Standards Working Group:

Task

The Performance Standards Working Group is charged with making a recommendation to the Emergency Evacuation Subcommittee concerning new or revised emergency evacuation requirements and compliance methods that would eliminate or minimize the potential for injury to full scale demonstration participants.

Reports

The working group will develop and present to the Emergency Evacuation Subcommittee for consideration any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing new emergency evacuation requirements with supporting economic and other required analysis, and any other collateral documents the working group determines appropriate; or

2. If new or revised requirements standards or compliance methods are not recommended, a draft report stating the rationale for those recommendations.

The working group chair (or his designee) should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for January 24, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee of the group's recommendations before proceeding with drafting of documents described in paragraphs 1 and 2 above.

The Performance Standards Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent Emergency Evacuation Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Performance Standards Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-758 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-1]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 3, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation

Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A) 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 7, 1992.

Denise Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26668.
Petitioner: Metro Air Charter, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow Metro Air Charter, Inc. pilots to perform such preventive maintenance as necessary to remove and reinstall seats in its aircraft.

Docket No.: 26681.
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To permit Airlift International's F27 and FH227 aircraft to be exempt from meeting the Federal Aviation Administration (FAA) deadlines for installation of TCAS-II equipment by December 30, 1991.

Dispositions of Petitions

Docket No.: 23858.
Petitioner:

Allison Gas Turbine Division. General Motors Corporation.

Sections of the FAR Affected: 40 CFR 87.7(b).
Description of Relief Sought/ Disposition: To exempt Allison Gas Turbine Division of General Motors Corporation from the exhaust emissions requirements of 40 CFR 87.21. Affected are those engines manufactured on or after January 1, 1984. The engines for which the exemption is requested are the Model 501-D22 series commercial version of the ZT56 turboprop engines covered by amended type certificate No. 282.
Grant, December 30, 1991, Exemption No. 5383

Docket No.: 25940.
Petitioner: Air Transportation.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend Exemption No. 5149 which allows Air Transportation to remove and reinstall aircraft cabin seats in the company's Cessna 182-C aircraft. Exemption No. 5149 expires February 28, 1992.
Grant, December 20, 1991, Exemption No. 5149A

Docket No.: 26303.
Petitioner: Florida Aircraft Leasing Corporation.
Sections of the FAR Affected: 14 CFR 91.9(a).
Description of Relief Sought/ Disposition: To permit Florida Aircraft Leasing Corporation to operate its McDonnell Douglas DC-6A and DC-6B aircraft at a 5 percent increased zero fuel and landing weight for the purpose of operating all-cargo aircraft under the terms of part 125 of the FAR.
Grant, December 31, 1991, Exemption No. 5388

Docket No.: 26346.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.417(c)(1)(i).
Description of Relief Sought/ Disposition: To permit the one-time firefighting drill required by § 121.417(c)(1)(i) to be accomplished by using simulation rather than by extinguishing an actual fire.
Denial, December 24, 1991, Exemption No. 5387

Docket No.: 26512.
Petitioner: Reeve Aleutian Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought/ Disposition: To permit Reeve Aleutian Airways, Inc. to equip only 25 percent of its fleet of aircraft, rather than the 50 percent figure required in § 121.356(a), with a Traffic Alert and Collision Avoidance System (TCAS) II by December 30, 1991.
Denial, December 23, 1991, Exemption No. 5382

Docket No.: 26532.
Petitioner: McCall Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/ Disposition: To allow properly trained pilots employed by MATCO to covert the cabins of its aircraft operated under FAR part 135 from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are specifically designed for that purpose.
Grant, December 20, 1991, Exemption No. 5381

Docket No.: 26547.
Petitioner: Florida West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 145.35 and 145.37(b).
Description of Relief Sought/ Disposition: To permit Florida West Airlines, Inc. to add a McDonnell Douglas DC-8 rating to its repair station certificate.
Grant, December 30, 1991, Exemption No. 5386

Docket No.: 26725.
Petitioner: Air Berlin, Inc.
Sections of the FAR Affected: 14 CFR 121.356 (a) and (c).
Description of Relief Sought/ Disposition: To permit Air Berlin, Inc. to operate two Boeing 737 (B-737) airplanes that are not equipped with an approved Traffic Alert and Collision Avoidance System (TCAS) II and the appropriate class of Mode S transponder for up to 6 months after the December 30, 1991, compliance date.
Grant, December 30, 1991, Exemption No. 5384

[FR Doc. 92-750 Filed 1-10-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: SR 20, Deception Pass State Park to Gibraltar Road, Skagit County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Skagit County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, suite 501, 711 South Capitol Way, Olympia, Washington 98501, Telephone: (206) 753-2120; E.R. Burch, State Design Engineer, Department of Transportation, Highway Administration Building, Olympia, Washington 98504, Telephone: (206) 753-6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District One, 15325 SE., 30th Place, Bellevue,

Washington 98007–6538, Telephone (206) 764–4020.

SUPPLEMENTARY INFORMATION: The FWHA, in cooperation with the Washington State Department of Transportation (WSDOT) will prepare an EIS on a proposal to address safety issues within this four mile segment of SR 20.

Alternatives to be considered include the improvement of the existing alignment, construction on a new alignment, construction on a combination of existing and new alignment and a no action alternative. Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies as well as citizens and organizations that have expressed interest in this project. A series of meetings with the public, interested community groups and governmental agencies will be held beginning in the Winter of 1992. In addition, advertisements offering interested persons the opportunity to attend and offer comments at a public hearing will be published prior to publication of the draft environmental impact statement. Public notice of actions related to the proposal which identify the date, time, place and meetings and note the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction.)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.

Issued on December 20, 1991.

Sharon R. Price,

Area Engineer, Olympia, Washington.

[FR Doc. 92–714 Filed 1–10–92; 8:45 am]

BILLING CODE 4901–22–M

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee (NMCAC) will hold its next meeting on January 22, 1992, 400 7th Street, SW., room 4200, Washington, DC. The meeting will be from 9 a.m. to 3 p.m. The focus of the meeting is on the new reauthorization legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, Federal Highway Administration, HIA–20, room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 7, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–744 Filed 1–10–92; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Federal Highway Administration

[Docket No. 90–07, Notice No. 2]

Critical Automated Data Reporting Elements

AGENCY: National Highway Traffic Safety Administration (NHTSA), and Federal Highway Administration (FHWA), DOT.

ACTION: Notice announcing the Critical Automated Data Reporting Elements for Highway Safety Analysis (CADRE).

SUMMARY: This notice is being issued to announce a final list of Critical Automated Data Reporting Elements for Highway Safety Analysis (CADRE). CADRE was initiated by NHTSA to improve the quality and analytic utility of automated state traffic records files by identifying a small set of accident data all states should incorporate in their accident reports and automated files. NHTSA and FHWA believe if states would collect these data elements and include them in automated databases, the usefulness of these files as a source of information for highway safety analysis would increase dramatically. This action reflects both NHTSA's and FHWA's interest in improving the analytic utility of state highway safety data.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Venturi, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; phone (202) 366–4709.

SUPPLEMENTARY INFORMATION:

Section 1—Background

Highway safety program professionals are dependent on accurate and complete data to:

—Identify problems, and evaluate the effectiveness of highway safety efforts and program activities.

—Assess the relationship between the vehicle and roadway characteristics, crash propensity, and injury severity to support the development or evaluation of highway safety programs.

The purpose of CADRE is threefold:

—Improve the analytic utility of states' police reported accident and related data files.

—Provide consistent and uniform data definitions/terminology.

—Facilitate the exchange of information about highway safety technology among states.

Government agencies, whether Federal, state, or local, need reliable and accurate information to perform the necessary functions of identifying problems, formulating solutions to these problems, defining policy, and evaluating programs. One of the critical areas for which all levels of government have responsibility is highway safety. Motor vehicle crashes are responsible for half of all accidental deaths. In recent years, more than 45,000 lives are lost and hundreds of thousands of persons injured as a result of motor vehicle crashes. The societal costs of these crashes exceed $74 billion annually.

Use of complete and accurate data maintained in computerized data files is required to develop and support the highway safety programs intended to reduce this toll. The data to support these programs come from a myriad of sources, e.g., police crash reports, driver licensing files, vehicle registration records, highway records, EMS/hospital injury records, etc.

Among these data sources, the police crash report is the most important. The crash report provides the basic information about traffic crashes which, when aggregated with data from other sources, forms the basis for all highway safety analyses.

Many improvements in the quality, quantity, and timeliness of police reported crash data have been realized since the passage of the Highway Safety Act of 1966. Despite these improvements, however, problems remain. Data are not uniform, making it difficult to evaluate program effectiveness. In many cases, important data are missing, greatly limiting the types of programs that can be evaluated.

Further, errors in data coding and entry greatly reduce the usefulness of some states' data as a source of information for supporting their highway safety program efforts.

The National Highway Traffic Safety Administration and the Federal Highway Administration believe the analytic utility of state automated accident files, can be greatly improved if states would emphasize the uniform collection and automation of a small number of critical data elements. These data, when combined with other information, form the basis for an analytic tool of great utility to highway safety.

CADRE is composed of selected data elements that describe the characteristics of the crash, the vehicles, the roadway and persons involved. All states are encouraged to collect these elements on their automated traffic records files. CADRE data elements need not be obtained from the police crash report. Some of the data could be obtained using advanced technology such as Bar Code Readers, Clipboard Computers, Global Positioning, Photogrammetry, etc. Some of the data could also be obtained from other sources through file linking, e.g. Vehicle Identification Numbers obtained from vehicle registration files.

The data elements in CADRE have been selected for emphasis because they are essential for conducting analyses of highway safety issues and because they are the data elements where the most serious deficiencies in collection and automation exist. CADRE elements need not appear on the police crash report form as long as they are readily available in another data base and can be merged with automated data from police reports.

Benefits

NHTSA and FHWA believe that the CADRE for Highway Safety Analysis, if collected and automated, would lead to improved crash data analysis at all governmental levels:

Public Benefits

The motoring public will benefit directly from improved vehicle and highway safety. By identifying problems and maximizing use of scarce resources, a reduction in injuries and fatalities could be achieved and vast amounts of dollars could be saved through the lowering of property damage crashes and costs associated with treatment for crash induced injuries.

State and Local Benefits

The states would have an improved data source which could be used to support their highway safety programs. Resources could be more appropriately applied to the most important programs. Many of these elements are essential for examining the benefit of safety belt use laws, alcohol laws, and especially for local jurisdictions, various law enforcement issues. Other elements will help support file linkages to look at public safety issues and the question of how much traffic crashes are costing the state and, ultimately, who pays. States could also compare themselves with their neighbors to determine the relative extent of their highway safety problem, and to help set program priorities.

Federal Benefits

NHTSA and FHWA conduct considerable numbers of analyses using state crash data. Data are used to support basic research, identify the need for demonstration projects, and evaluate countermeasures. Including the CADRE in state computerized files would have a direct impact on the validity of analyses done with these data. In addition, it would materially help with the identification of vehicle design characteristics which are related to increased crash and injury propensity, or the evaluation of countermeasures which are intended to reduce vehicle crash and injury occurrence.

Implementing the improvements and uniformity for these data elements will require a commitment by all parties. Local, state and Federal entities must work together to improve the quality of these data bases thus ensuring the availability of useful data for highway safety purposes. If we are to manage our highway safety program effectively, at all levels of government, we need complete and accurate data. Adoption of CADRE would help meet that goal.

Proposed CADRE

In May 1990, NHTSA published the proposed CADRE in the **Federal Register** (55 FR 18220).

Proposed CADRE Elements of May 1990

Accident Level Elements

1. First Harmful Event.
2. Speed Limit.

Vehicle Level Elements

3. Vehicle Identification Number (VIN).
4. Location and Extent of Vehicle Damage.

Person Level Elements

5. Age.
6. Seating Position.
7. Occupant Protection System Type and Use.
8. Ejection/Entrapment/Extrication.
9. Body Region Injured.
10. Treatment/Disposition of Injured.
11. BAC Test Results.

Discussion of Comments

More than 100 comments were received from many segments of the highway safety community. Those who responded included the following: 41 States, 25 Police Agencies, 6 Universities, 2 Public Health Services, 3 Auto Companies, 9 Highway Safety Organizations, and 15 Others.

The respondents identified a number of specific issues related to CADRE and its implementation, including:

1. CADRE comments should be examined by a task force of technical experts to provide a broader highway safety perspective.
2. The need for a voluntary (not mandatory) program of compliance with CADRE.
3. Use of National data standards when creating data element code structures.
4. Vehicle Identification Number (VIN) data should be part of the final CADRE.
5. Ability to link multiple data files in the state traffic records system will provide for improved reporting for analysis.
6. Police are not trained to collect accurate injury data, therefore such data should be deleted from CADRE.
7. The Alcohol element should be expanded to include Drug data.
8. The National Governors' Association Heavy Truck data elements should be associated with the CADRE activity.

1. Task Force

In response to suggestions that a task force of national experts review comments to the docket, a task force of safety professionals was created, through the National Safety Council, representing a broad spectrum of constituencies including groups representing state and local officials, police, academia, manufacturers, etc. (see Appendix #1 Task Force). The Task Force members reviewed the docket and provided NHTSA with their individual viewpoints. The Task Force met twice to develop its comments, and provided NHTSA with a final report which was helpful to the Agency in developing the final CADRE. A copy of the final report has been placed in the public docket 90-07, and can be requested by the public by writing to NHTSA Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Please refer to Docket #90-07, Notice. 02.

2. Not Mandatory

Many respondents felt states should not be required to implement CADRE. Members of the Task Force agreed that a mandatory requirement would not lead to improvements in effective use of crash data, but would simply alienate the departments doing the work. CADRE should not be mandatory. While the commenters advised against making the CADRE mandatory, a vast majority of respondents felt the time for a CADRE-like program was long overdue.

NHTSA and FHWA are publishing CADRE in the **Federal Register** because it is the most efficient and direct way of informing the highway safety community. This notice does not impose regulatory requirements. The states are encouraged but are not required to adopt the CADRE.

3. Standards

Many respondents suggested that whatever data were finally selected as CADRE elements be coordinated with national data standards documents such as the Data Element Dictionary (D20.1) and the Manual on Classification of Motor Vehicle Traffic Accidents (D16.1). There was no disagreement on the Task Force that each element should be as close to national data standards as possible.

Both NHTSA and FHWA have always felt national data standards should be applied when building data systems whether they are used locally or on a nationwide basis.

Every attempt was made to encourage and foster data standardization, when possible.

The latest version of the draft ANSI D20.1, Data Element Dictionary, and ANSI D16.1, Manual On Classification Of Motor Vehicle Traffic Accidents, have been used as the source for particular data elements. In certain elements, some of the values within elements have been shortened, but they still retain the basic D20 and D16 code structure.

CADRE does not intend to supersede the D20 and D16 update process. As D20.1 is now being reviewed for ballot and for eventual adoption by the ANSI organization, the CADRE activity is being coordinated with the D20 update to make sure CADRE, D20, and D16 will be using the same definitions and code structures. If the final D20 differs from CADRE, CADRE will be modified to reflect the D20 values.

4. Vehicle Identification Number

Respondents from academia and the automotive industry were adamant that the element Vehicle Identification Number (VIN) remain a CADRE element as they believed VIN is the most efficient means to provide a vast array of vehicle-related data. The Task Force also felt that VIN could be used as an accurate means of identifying stolen vehicles, for verifying the crash involvement of specific vehicles, and for examining the crash experience of particular vehicle designs. However, there are considerable collection problems which will have to be surmounted. Future VIN data collection will probably be handled by stripe and bar code readers found in the police vehicle (Clipboard Computer will eventually have a bar code reader as part of the basic system).

The problem for the present could be handled by linking vehicle tag number to the registration file which contains the VIN, although effort would have to be expended to identify the VIN for out of state vehicles such as use of stripe and bar code readers etc.

5. Data Linkage

Each member of the Task Force, as well as some respondents felt states should include data in their traffic records system to link multiple data files to provide needed data for analysts. The element, Date of Birth, evolved from the original CADRE element Age. The Task Force report recommended that the Age element be changed to Date of Birth so it can be used as a critical data linkage element from the accident file to the emergency medical services and hospital files. Reports generated with input from these files can provide the analyst with injury data lacking in the accident data, but essential for effective analysis. NHTSA and FHWA believe the future development of accident/EMS data linkage will depend on such non-personal data elements as Date of Birth. The Task Force recommended that the Roadway Linkage elements be added to permit linkage to other highway safety files such as traffic volumes and roadway inventory files to obtain data for better analysis. Linkage of state police accident reports with these files through common site location elements permits states to conduct such analyses.

6. Injury Data

Many respondents expressed concern that original element, Body Region Injured, could not be accurately coded by police at the scene of the accident as the police are not trained to make medical diagnoses. Members of the Task Force agreed that the element Body Region Injured should be deleted from CADRE. The Agencies agree with that position and have removed it from the final CADRE.

7. Drug Data

Some Task Force members and respondents felt the Alcohol element should be expanded to include data on drugs. The agencies agree and have expanded the element to include drug data. It was also recommended that this element need not necessarily appear on the accident report form as long as it was available on the automated traffic records system.

8. NGA Heavy Truck Data

As part of a separate report, the Federal Highway Administration, working with the National Governors' Association (NGA), has identified a critical set of data elements for heavy truck analysis. This effort is complementary to the CADRE effort as both are concerned with improving the analytic utility of police reported crash data. The truck data elements have been addressed in the NGA publication entitled "Supplemental Truck and Bus Accident Report." There is no conflict between the NGA and CADRE data elements. When states implement both sets of elements it is important to assure that modifications will accommodate both NGA and CADRE data elements.

The NGA activity is designed to provide reliable, uniform and comprehensive data on truck and bus accidents that involve injury and property damage. Uniform truck data collection by the states would permit a comprehensive look at the truck safety problem and make interstate aggregation of data possible.

The CADRE elements have been grouped in three general categories: Accident, Vehicle and Person. CADRE data elements, values and definitions conform with the ANSI D16.1, Manual on Classification of Motor Vehicle Traffic Accidents. Crash data are needed to provide general characteristics about the circumstances of the accident and to properly classify the crash into categories necessary for highway safety analysis.

Data to identify and classify each vehicle involved in the crash is also essential. This information permits analysis of differences in numbers of crashes and frequency of injuries associated with different types of vehicles and countermeasures. Data about each person in the crash permit association of crash outcomes with vehicle characteristics and evaluation of occupant protection issues. The data file must be structured so that each person in the crash, including uninjured occupants, can be identified as an

occupant of one of the involved vehicles or as a nonoccupant.

This notice announces the completion of the final version of CADRE.

Section 2—Detailed CADRE Description

The following data elements represent the agencies' final list of elements that comprise the CADRE.

The agencies developed this final version after careful review of the written comments to the May 1990 notice and considerable discussion with states, safety professionals, traffic records specialists, manufacturers and other interested parties at the two task force meetings.

Final CADRE Elements

Accident Level Elements

1. Manner of Collision.
2. First Harmful Event.
3. Relation To Roadway.
4. Maximum Speed Limit.
5. Roadway Linkage.

Vehicle Level Elements (Each vehicle involved in Crash)

6. Most Harmful Event.
7. Vehicle Identification Number (VIN).
8. Towed Due To Damage.
9. Damaged Areas.
10. Extent of Deformity.

Person Level Elements (Each person, occupant or driver, involved in Crash)

11. Seating Position—Occupant level.
12. Occupant Protection System Use—Occupant level.
13. Air Bag Deployed—Occupant level.
14. Date of Birth—Person level.
15. Ejection—Occupant level.
16. Trapped/Extrication—Occupant level.
17. Transported to Medical Facility—Person level.
18. Alcohol/Drug Involvement—Driver level.

There are differences in data elements and code structures between the Proposed CADRE and the Final CADRE data Elements. At the Accident level, the elements First Harmful Event and Speed Limit code structures were adjusted slightly to reduce the number of values within each element. However, it was determined that good evaluation would require the addition of three more elements including Manner of Collision, Relation to Roadway and Roadway Linkage. Roadway Linkage is a composite of other data elements needed to link state police accident reports with traffic and roadway inventory files. Roadway Linkage will be used instead of the individual elements such as (Trafficway Identifier, Route Signing, Milepoint, State, City and County).

At the Vehicle Level, both VIN and Extent of Deformity were retained. Location of Damage was merged with the new element Damaged Areas. There are two new elements in this section, Most Harmful Event and Towed Due to Damage. The code structure for Most Harmful Event is identical to the Accident Level element First Harmful Event. Towed Due to Damage was added because of the wide disparity in threshold damage dollar amounts among the states. Collection of this element will permit better comparison of data between states.

Person Level elements were increased from seven to eight elements, with one element being dropped (Body Region Injured). This element was dropped because it was felt that police are not qualified to make injury diagnoses.

The element Age was renamed Date of Birth, and a slight change made in the code structure. The old element Ejection/Entrapment/Extrication was separated into two elements named Ejection and Trapped/Extrication. Treatment/Disposition of Injured element was changed to Transported to Medical Facility for simplicity and because the degree of difficulty in collecting and coding medical treatment information. Seating Position, Occupant Protection System Use and BAC-Alcohol/Drug Use were retained with some code structure modifications.

A more detailed rationale and expanded code structure for each data element appearing in the final CADRE can be found in this section describing each element.

1. Manner of Collision

Rationale

It is necessary in analysis of crash data to describe the basic configuration of the crash. This element provides analysts with basic information as to how the vehicles came together, so that they may distinguish between different types of crashes and include only the types of crashes in which they are interested.

Definition

The identification in a crash of how the vehicles initially came together.

Element Values

Code and Value

0 Not Collision with Motor Vehicle in Transport
1 Rear-End
2 Head-On
3 Rear-to-Rear
4 Angle
5 Sideswipe, Same Direction
6 Sideswipe, Opposite Direction
9 Unknown

2. First Harmful Event

Rationale

This element helps provide the major clues as to how the crash occurred and when combined with other information it can provide an accurate picture of the crash. Applications include use of the data issued to identify traffic safety problems and evaluate countermeasures such as identifying the size or magnitude of rollovers for utility vehicles, and collisions with a bicyclist.

The CADRE listing of First Harmful Event codes is intended to standardize variables of broad national and state interest. This listing is not meant to discourage continued collection of other specific elements of interest such as boulders in mountain states or snow banks in northern states.

Definition

The injury or damage producing event which characterizes the crash type and identifies the nature of the first harmful event, such as explosion in the vehicle.

Element Values

Code and Value

Noncollision
01 Overturn
02 Fire/Explosion
03 Immersion
04 Jackknife
07 Other Noncollision
Collision With object not fixed
08 Pedestrian
09 Pedalcycle
10 Railway Train
11 Animal
12 Motor Vehicle in Transport
13 Motor Vehicle in Transport in Other Roadway
14 Parked Motor Vehicle
18 Other Object (not fixed)
Collision With fixed object
20 Impact Attenuator
21 Bridge/Pier/Abutment
22 Bridge Parapet End
23 Bridge Rail
24 Guardrail Face
25 Guardrail End
26 Median Barrier
27 Highway Traffic Sign Post
28 Overhead Sign Support
29 Luminaire/Light Support
30 Utility Pole
31 Other Post
32 Culvert
33 Curb
34 Ditch
35 Embankment
38 Fence
40 Mail Box
42 Tree
43 Other Fixed Object
99 Unknown

3. Relation to Roadway

Rationale

This element is useful in the identification of highway design safety problems and countermeasures. For example, in fatalities caused by rollovers (rollover as the Most Harmful Event), the First Harmful Event is an impact outside the shoulder (as identified by using Relation to Roadway), in most cases.

Definition

This element describes the location of the First Harmful Event as it relates to its position within or outside the Trafficway.

Element Values

Code and Value

1 On Roadway
2 Shoulder (other than Shoulder within Median or Gore)
3 Median (other than Median within Gore)
4 Outside Shoulder—Left
5 Outside Shoulder—Right
6 Off Roadway—Location Unknown
7 Gore
9 Unknown

4. Maximum Speed Limit

Rationale

Speed limit is a surrogate for a number of roadway related elements that are not readily obtainable but which are useful in highway safety analysis. For example, speed limits imply a certain level of commercial development, the character of roadside safety appurtenance, the general speeds of traffic, roadway design characteristics, the likelihood of certain crash severities, etc. This information is helpful when attempting to account for the effect of these various factors without direct knowledge of their presence.

Definition

The posted or statutory speed limit for a particular section of roadway, whether posted or not. In those instances where crashes occur at the intersection of two roadways, the higher speed limit should be coded.

Element Values

Code and Value

Actual/Posted Miles Per Hour
99 Unknown

5. Roadway Linkage

Rationale

Roadway Linkage elements will serve to identify the proper political jurisdiction in which the crash took place, and provide linkage potential from the crash file to other databases including emergency medical services (EMS) and hospital data.

Key data for highway safety analyses are contained on other state maintained data files. Traffic volumes are essential for determining hazardous sites and many other highway safety analyses. State roadway data files contain key information on roadway type, land use, access control, number of lanes, and useful safety data elements such as lane width and shoulder width. Linkage of state police accident reports with state traffic and roadway inventory files through common site location elements permits states to conduct such analyses. The exact combination of elements required to make these links vary from state to state, but may include Trafficway Identifier, Route Signing, Milepoint, State, City and County.

6. Most Harmful Event

Rationale

Safety countermeasures such as occupant restraint systems, vehicle crashworthiness improvements, and roadside safety hardware are directed at reducing collision severity. This requires reduction in the severity of the Most Harmful Event of the crash element. Thus, Most Harmful Event is the appropriate element to use in studies aimed at reducing crash severity. When combined with the First Harmful Event element, information to identify safety problems and suggested countermeasures can be obtained. For example, in rollover crashes, rollover is typically the Most Harmful Event, but often not the First Harmful Event. In rollover crashes, the cause of the tripping is often a First Harmful Event such as running into ditches, curbs or embankments.

The CADRE listing of Most Harmful Event codes is intended to standardize variables of broad national and state interest. This listing is not meant to discourage continued collection of other specific elements of interest such as boulders the mountain states or snow banks in northern states.

Definition

The event producing the greatest injury or damage for each involved vehicle which identifies the nature of the Most Harmful Event such as Fire/Explosion.

Element Values

Code and Value

Noncollision
01 Overturn
02 Fire/Explosion
03 Immersion
04 Jackknife
07 Other Noncollision

Collision With Object Not Fixed
08 Pedestrian
09 Pedalcycle
10 Railway Train
11 Animal
12 Motor Vehicle in Transport
13 Motor Vehicle in Transport in Other Roadway
14 Parked Motor Vehicle
18 Other Object (not fixed)

Collision With Fixed Object
20 Impact Attenuator
21 Bridge/Pier/Abutment
22 Bridge Parapet End
23 Bridge Rail
24 Guardrail Face
25 Guardrail End
26 Median Barrier
27 Highway Traffic Sign Post
28 Overhead Sign Support
29 Luminaire/Light Support
30 Utility Pole
31 Other Post
32 Culvert
33 Curb
34 Ditch
35 Embankment
38 Fence
40 Mail Box
42 Tree
43 Other Fixed Object
99 Unknown

7. Vehicle Identification Number (VIN)

Rationale

The collection and coding of the VIN provide vehicle design characteristics in a crash and can also provide the capacity for obtaining other information, i.e., occupant protection system availability and anti-lock brake equipment, in addition to Make, Model data. VIN is useful to the States in a number of ways as it provides for the identification of each individual vehicle. Thus, for example, it possibly can be used to identify stolen vehicles. Because it provides a more accurate means of identifying vehicles, States can use VIN to examine the crash experience of particular vehicle design characteristics which they may want to regulate. For example, VIN can be sued to accurately distinguish between motorcycles of different engine classes, providing the data needed to determine if younger riders are more involved in crashes while riding bikes of particular sizes.

VIN data can also be used to provide specific vehicle identification with a minimum of data collection. Also, it can be used to understand the presence of specific characteristics, such as identifying convertibles when doing studies on ejection.

Definition

A unique 17 digit combination of alphanumeric characters affixed to the vehicle in specific locations and

formulated by the manufacturer which accurately describes the vehicle and its components.

8. Towed Due to Damage

Rationale

States have different thresholds for determining when a crash report must be completed. In some states the threshold is a dollar amount of damage which varies from $100 to $1000. In other states the threshold is an injury in the crash, while others require reports for crashes when a vehicle is towed from the scene. Collecting this element will permit better comparison of results between states through use of the threshold Towed Due to Damage.

Definition

Determination as to whether or not an involved vehicle was towed from the crash scene due to damage incurred in the crash.

Element Values

Code and Value

1 Yes
2 No
9 Unknown

9. Damaged Areas

10. Extent of Deformity

Rationale

These elements are a measurement of severity in terms of crash forces, to provide a uniform threshold for analyses. It is necessary and important for relating crash severity to injury severity, and controlling for differences which effect analysis. States will use these elements to provide an objective means of separating more severe crashes from less severe in order to evaluate effectiveness of injury reducing countermeasures. They can be of great importance in evaluating the effectiveness of occupant protection systems. The Traffic Accident Data (TAD) Project manual for measuring extent of deformity has been successfully used by some states. The structure below is almost identical to the TAD system.

The TAC scale (The Traffic Accident Data Project Scale), which is being successfully used by several states, is clearly superior for analysis purposes. However, some representatives of the Task Force feel it will be difficult to persuade their police agencies to implement TAD, especially considering the training that will be required to implement the TAD. Consequently, for states in which implementing TAD is not a realistic option, the coding of the two elements, Damaged Areas and Extent of Deformity is suggested. In this alternative, however, coding of the Extent of Deformity element lacks definition or a photographic frame of reference (the strength of TAD) for the coded elements. The resulting lack of consistency in coding this element will clearly limit the utility of this alternative.

Definition

The location and extent of vehicle damage sustained in the crash.

Element Values

Damaged Areas

Code and Value

00 None
01 Center front
02 Right front
03 Right side
04 Right rear
05 Center rear
06 Left rear
07 Left side
08 Left front
09 Top and Windows
10 Undercarriage
11 Total (All Areas)
12 Other
99 Unknown

Extent of Deformity

Code and Value

0 None
1 Very Minor
2 Minor
3 Minor/Moderate
4 Moderate
5 Moderate/Severe
6 Severe
7 Very Severe
9 Unknown

11. Seating Position

Rationale

Without known seating position for each person in the vehicle, it is not possible to fully evaluate the effect of occupant protection programs. Analysis would be limited to the effect on the driver, since the driver is always reported in crash files. States need the information to satisfy the insurance industry, to assess the effectiveness of restraint use by all occupants, and to provide a basis for future occupant restraint legislation. Federal entities need the information to assess effectiveness and prevent injuries to rear seat occupants and to analyze the types of injuries received by occupants in all seating positions.

Definition

The location for each occupant in, on, or outside of a motor vehicle prior to the impact of a crash.

Element Values

Code and Element

11 Front Seat—Left Side (Motorcycle Driver)
12 Front Seat—Middle
13 Front Seat—Right Side
21 Second Seat—Left Side (Motorcycle Passenger)
22 Second Seat—Middle
23 Second Seat—Right Side
31 Third row—Left Side (Motorcycle Passenger)
32 Third row—Middle
33 Third row—Right Side
50 Sleeper Section Of Cab (Truck)
51 Passenger in other enclosed passenger or cargo area (non-trailing unit)
52 Passenger in unenclosed passenger or cargo area (non-trailing unit)
54 Trailing Unit
55 Riding On Vehicle Exterior (non-trailing unit)
88 Pedestrian (Nonoccupant)
99 Unknown

12. Occupant Protection System Use

13. Air Bag Deployed

Rationale

Proper classification of the use of available occupant protection systems would be used to evaluate the effectiveness of such equipment, especially at a time when air bags are rapidly increasing in the vehicle population. The data must be collected for all persons whether injured or not.

Definition

The restraint equipment in use by *each* occupant at the time of the crash, or the helmet use by a motorcycle or bicycle rider.

Element Values

Occupant Protection System Use

Code and Value

0 None Used—Vehicle Occupant
1 Shoulder belt only used
2 Lap belt only used
3 Shoulder and lap belt used
4 Child Safety seat used
5 Helmets used
8 Not applicable—Nonmotorist
9 Restraint use unknown

Air Bag Deployed

Code and Value

3 Deployed
4 Nondeployed
8 Not applicable
9 Unknown

14. Date of Birth

Rationale

Uses of accurate reporting of age include assessing effectiveness of occupant protection systems for specific

age groups, and identifying the need for safety programs directed toward them.

Without this element, analysts could not identify specific groups of the general population, nor could they direct countermeasures which would assist in reducing the problem.

This element is also critical in providing linkage from the crash file to EMS and hospital records, especially when it is becoming more apparent that most jurisdictions restrict the use of name and other personal identifiers when attempting file linkage.

Definition

The year, month, and day of birth of *each* involved person in an accident.

Element Values

Code and Value

0000–9999 Year of Birth
01–12 Month of Birth
01–31 Day of Birth
99999999 Unknown

15./16. Ejection and Trapped/Extrication

Rationale (for Ejection and Trapped/Extrication)

Occupant protection systems prevent or mitigate ejections to different extents. This element, on whether occupants were trapped or extricated, would be used by State and federal analysts to evaluate these issues and to evaluate the effect entrapment has on the injury outcome of crashes. Crash injury outcome may depend on information from this element. The location of *each occupant* as a result of a crash can be compared to occupant protection systems and seating position to determine crashworthiness.

Ejection

Definition

The location of the occupant's body as being completely or partially thrown from the vehicle as a result of a crash.

Element Values

Code and Value

0 Not Applicable
1 Not Ejected
2 Totally Ejected
3 Partially Ejected
9 Unknown

Trapped/Extrication

Definition

Persons who are mechanically restrained in the vehicle by damaged vehicle components as a result of a crash, and/or freed/removed from the vehicle.

Element Values

Code and Value

0 Not Applicable
1 Not Trapped
2 Trapped/Extricated
3 Trapped/Not Extricated
9 Unknown

17. Transported to Medical Facility

Rationale

The reporting of injury severity by police officers is largely subjective. Studies of the National Accident Sampling System (NASS) data have revealed that 40% of AIS 3+ injured persons are coded as minor by police, and, 60% of serious injuries are AIS 2 or 1. Reporting the disposition of the injured persons would provide a more objective evaluation of the severity of the crash since its determination would not be subject to interpretation by police. Such objectivity would be useful for cost effective countermeasure analysis, and identifying the effectiveness of occupant protection use laws, motorcycle helmet use laws, etc. Rural states in particular have to know instances of "demand" for ambulance services. Good data is necessary to reduce societal costs by determining optimal emergency medical services locations.

Definition

Status for each person involved in a crash as to whether that person was transported from a traffic crash site to a medical facility for treatment of injuries sustained in crash. Transportation does not need to have been by ambulance or other emergency medical services vehicle.

Element Values

Codes and Values

0 No
1 Yes
9 Unknown

18. Alcohol/Drug Involvement

Rationale

It is clear that alcohol remains the single most important drug involved in motor vehicle crashes. While Blood Alcohol Concentration (BAC) will not be obtained for all crashes, whenever a driver is tested, the test results should be included in CADRE. If BAC is not included in the police report, it should still be included on the automated file if possible. When there has been no test for BAC, there should be some indication of the investigating officer's judgment of driver impairment or non-impairment.

Because of the concern and evidence that drugs other than alcohol are increasingly a factor in motor vehicle crashes, whatever evidence is available of other drug use also should be included in CADRE.

Alcohol/Drug related traffic crashes are a serious safety problem. Many State programs are in place to decrease the incidence of drunk driving and driving while under the influence of drugs. Blood Alcohol Concentration (BAC) and other Drug use measurement would be used to provide an accurate measure of alcohol/drug related crashes in order to evaluate effectiveness of these programs and to identify high problem areas. Inclusion of the Alcohol/Drug data element on the accident report form is encouraged. The Alcohol Drug data does not necessarily have to appear on the accident report, but it should be available in the State's automated traffic records file.

Police Reported Alcohol/Drug Presence

Definition

Investigating police officer's assessment of whether alcohol or drugs were used by the vehicle driver, and whether the driver was impaired or whether alcohol/drugs contributed to the crash.

Element Values

Codes and Values

0 Neither Alcohol or Drugs present
1Yes (Alcohol Present)
2 Yes (Drugs Present)
3 Yes (Alcohol and Drugs Present)
7 Not Reported
9 Unknown

Alcohol

Definition

The percent of BAC (or its equivalent for Other Drugs).

Variables

Codes and Element

XYZ Code actual value BAC of 0.15 g/ml is coded 015
95 Test Refused
96 None Given
97 Test Given, Results Unknown
99 Unknown

Drugs

Variables

Codes and Element

0 Not given
1 No drugs reported
2 Drugs reported (if so specify, **)
7 Not reported
9 Unknown

**Identify results for the five substances regulated for commercial motor vehicle drivers: Marijuana, Cocaine, Opiates, Amphetamines, PCP.

Section 3—CADRE Development and Implementation

The Agencies plan that implementation of CADRE will include

contact with the states to determine how closely the traffic records files and crash reports mirror the CADRE elements, codes and values, and to identify legal and institutional barriers to implementation. The process will be accomplished with assistance from the NHTSA Regional Offices. This effort is not part of NHTSA's State Traffic Records Assessment activity.

As another step, NHTSA will hold Regional and State workshops on CADRE for those interested in making changes to their crash report forms and automated traffic records systems. NHTSA plans to develop guidelines for use of its highway safety and demonstration funds (402 & 403) to implement CADRE.

Any CADRE changes made by the states can, of course, be done on the state's schedule. Most states have a time table for review and update of the crash report. It is during that time CADRE changes can be made with minimal difficulty, and yet provide the benefit to the state such a revision generates. CADRE is a voluntary effort and will not be mandated by the NHTSA.

Those interested in implementing CADRE should contact Mr. Charles J. Venturi at 202/366-4709.

Issued On:

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

Appendix No. 1

The following individuals served as members of the CADRE Task Force or as Technical Support:

Members

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Thomas W. Brahams, Institute of Transportation Engineers
Barbara H. DeLucia, Texas Transportation Institute
Steven Flint, New Mexico Transportation Department
Ernest S. Grush, Ford Motor Company
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Coy H. Johnston, Arizona Highway Patrol Bureau
Philip P. Madonia, Illinois Department of Transportation
Clark Martin, American Association of Motor Vehicle Administrators
David L. Mosley, Virginia Department of Motor Vehicles
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Thomas A. Boerner, Minnesota Department of Public Safety
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Mark L. Edwards, National Highway Traffic Safety Administration
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Richard F. Pain, Transportation Research Board
Carlton C. Robinson, Highway Users Federation for Safety and Mobility
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Nancy Greene, National Association of Governors' Highway Safety Representatives
Barbara Harsha, National Association of Governors' Highway Safety Representatives
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Charles J. Venturi, National Highway Traffic Safety Administration
Nate Walker, Missouri Department of Public Safety

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BILLING CODE 4910-22-M 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 6, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0025.
Form Number: ATF F 2 (5320.2).
Type of Review: Extension.
Title: Notice of Firearms Manufactured or Imported.
Description: The National Firearms Act requires licensed importers and manufacturers to notify ATF when firearms are imported or manufactured. This action registers the firearms in the National Firearms Registration and Transfer Record and makes their possession of the firearms lawful. Tax otherwise due under 26 U.S.C. 5821 does not apply.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 1,200 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-762 Filed 1-10-92; 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

January 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0081.
Form Number: FFIEC 031, 032, 033 and 034.
Type of Review: Revision.
Title: (MA)—Reports of Condition and Income (Interagency Call Report).
Description: Reports are filed pursuant to 12 U.S.C. 161, 164 and

1823(j). Data are used to monitor the financial condition, and earnings performance of individual banks as well as the entire banking industry. Data are also used for research, program planning, and OCC publications.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 3,900.

Estimated Burden Hours Per Response: 34 hours, 36 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 538,605 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–763 Filed 1–10–92; 8:45 am]

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Sunshine Act Meetings

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Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, 10:00 a.m., Wednesday, January 15, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Pride in Public Service Award

The Commission will present the Pride in Public Service Award to January's recipient.

2. Choking Hazards Associated with Balloons

The staff will brief the Commission on options for action with regard to a rulemaking proceeding to address choking hazards associated with balloons.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Date January 8, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-946 Filed 1-9-92; 1:22 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 9, 1992.

FCC To Hold Open Commission Meeting Thursday, January 16, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 16, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—COMMON CARRIER—Title: Petition for Emergency Relief and Declaratory Ruling filed by BellSouth Corporation. Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* regarding an order of the Georgia Public Service Commission on provision by BellSouth of voice mail service in Georgia..

2—PRIVATE RADIO—Title: Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea (PR Docket No. 90-480). Summary: The Commission will consider adoption of a *Report and Order* to amend the maritime mobile service rules to incorporate the provisions of the GMDSS for U.S. vessels. The changes would affect cargo ships of 300 gross tons and over and passenger ships carrying 12 or more passengers regardless of size.

3—OFFICE OF ENGINEERING AND TECHNOLOGY—Title: Amendment of Section 2.106 of the Commission's Rules to Allocate Emerging Technology Bands for Future Requirements. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning allocation of spectrum for emerging technologies.

4—OFFICE OF ENGINEERING AND TECHNOLOGY—Title: Request for Pioneer's Preference by ORBCOMM, STARSYS, and VITA in Conjunction With Their Petitions to Allocate Spectrum for Low-Earth Orbit Satellites (ET Docket No. 91-280, RM-7334, RM-7399 and RM-7612). Summary: The Commission will consider pioneer's preference requests filed by ORBCOMM, STARSYS, and VITA regarding proposed fixed or mobile staellite services below 1 GHz using low-earth orbit satellites.

5—OFFICE OF ENGINEERING AND TECHNOLOGY—Title: Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Interactive Video and Data Services (GEN Docket No. 91-2). Summary: The Commission will consider adoption of a *Report and Order* concerning allocation of spectrum for Interactive Video and Data Services and associated service rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: January 9, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-962 Filed 1-9-92; 1:49 pm]

BILLING CODE 6712-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE CHANGES

"FEDERAL REGISTER" CITATION, OF PREVIOUS ANNOUNCEMENT: FR Doc. 92-654, 57 FR 953.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 12, 1992; commencing at 6:00 p.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628-21000.

CHANGES IN THE MEETING:

Open Session:

As announced previously, all agenda items were to be discussed in open session. However, a portion of the meeting may now be closed pursuant to a majority vote of the Board of Directors to be taken prior to the Committee meeting. If a closed session is held subject to the aforementioned vote, the Committee will hear and consider a report on a December 19, 1991 meeting with the Senate Committee on Governmental Affairs, and will also consider a draft letter to Senator John Glenn, Chairman, Committee on Governmental Affairs, which is written follow-up to the above-referenced December meeting. The closing will be authorized by the relevant section of the Government in the Sunshine Act [5 U.S.C. Section 552 (b)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, S.W., Washington, D.C. 20024, in its three reception areas, and will otherwise be available upon request.

Agenda:

Previously announced agenda item number 3 has been changed to agenda item number 4 and will now be discussed in closed session pursuant to a majority vote of the Board of Directors. In addition, former agenda item number 3 (now agenda item number 4) has been expanded to include consideration of a draft letter to Senator John Glenn. The amended agenda is as follows.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

2. Approval of Minutes of July 9, 1991 Meeting.
3. Consideration of Draft Management Report on the Inspector General's 1990 and 1991 Semiannual Reports.

Closed Session:

4. Consideration of Committee Chairman's Report on December 18, 1991 Meeting with Senate Committee on Governmental Affairs and Draft Letter to Senator John Glenn, Chairman, Senate Committee on Governmental Affairs.

CONTACT PERSON FOR INFORMATION:
Patrica D. Batie, Executive Office, (202) 863–1839.

Date issued: January 9, 1992.

Patrica D. Batie,

Corporate Secretary.

[FR Doc. 92–947 Filed 1–9–92; 1:23 pm]

BILLING CODE 7050–01–M

Corrections

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Implementation of Sections 206, 207 and 401 of the Housing and Urban Development Reform Act of 1989 as Amended by the Cranston-Gonzalez National Affordable Housing Act of 1990

Correction

In rule document 91-30588 beginning on page 66956 in the issue of Friday, December 27, 1991, make the following correction:

Exhibit B of Subpart K—[Corrected]

On page 66962, in the second column, in part 1951, in Exhibit B of subpart K, under *II. Eligible Projects*, in paragraph B., in the first line, insert "not" after "will".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Cattle Report Date Changes

Correction

In notice document 91-23138 appearing on page 48516 in the issue of Wednesday, September 25, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-23130" should read "FR Doc. 91-23138".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0408]

Drug Export: Blood Grouping Reagents: Anti-jk^a (Monoclonal) Biclone for Tube and Microplate Test; Anti-jk^b (Monoclonal) Bioclone for Tube and Microplate Test

Correction

In notice document 91-24846 beginning on page 51907 in the issue of Wednesday, October 16, 1991, make the following correction:

On page 51907, in the third column, under **SUMMARY**, in the fourth line "failed" should read "filed".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0450]

Public Workshop; Request for Comments

Correction

In notice document 91-29818 beginning on page 65094 in the issue of Friday, December 13, 1991 make the following corrections:

1. On page 65094, in the third column, under **ADDRESSES**, in the seventh line "600" should read "660".

2. On page 65095, in the first column:

(a) In the third line, "in" should read "is".

(b) In the second full paragraph, in the fifth line "or" should read "of".

(c) In the third paragraph, in the sixth line "by" should read "at".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-4735; OR 030-01-4212-13; GP1-348]

Realty Action; Exchange of Public Lands; Baker County, Oregon

Correction

In notice document 91-23280 beginning on page 49197, in the issue of September 27, 1991, make the following corrections:

1. On the same page, in the third column, in the first land description, after the fifth line, the following material was omitted: "T. 9S., R. 42E., Section 35, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼."

2. On the same page, in the same column, in the same land desription, in the seventh line, "NE½" should read "NE¼".

BILLING CODE 1505-01-D

federal register

Monday
January 13, 1992

Part II

Department of Labor

Employment and Training Administration
20 CFR Part 655
Wage and Hour Division
29 CFR Part 507

Labor Conditions Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA89

Wage and Hour Division

29 CFR Part 507

RIN 1215-AA69

Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models

AGENCIES: Employment and Training Administration, Labor and Wage and Hour Division, Labor.

ACTION: Interim final rule; request for comments; extension of comment period.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are revising their regulations governing the filing and enforcement of labor condition applications filed by employers seeking to employ aliens in specialty occupations and as fashion models of distinguished merit and ability on H-1B visas. Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (IMMACT), an employer seeking to employ an alien in a specialty occupation or as a fashion model of distinguished merit and ability on an H-1B visa is required to file a labor condition application with DOL before the Immigration and Naturalization Service (INS) may approve an H-1B visa petition. The labor condition application process is administered by ETA; complaints and investigations regarding labor condition applications are the responsibility of ESA.

The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) amended the INA and the IMMACT to substantially change the H-1B labor condition application program, retroactive to October 1, 1991. This interim final rule revises the H-1B regulations to implement the MTINA amendments.

DATES: *Effective Date:* October 1, 1991.

Comments: Written comments on this interim final rule are invited from interested parties. Comments must be received on or before February 12, 1992. The comment period on the interim final rule published at 56 FR 54720 (October 22, 1991) (FR Doc. 91-25281) is extended through February 12, 1992.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Immigration Task Force, room N-4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the interim final rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205-0310.

The Employment and Training Administration estimates that up to 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (IMMACT), Public Law 101-649, 104 Stat. 4978, was enacted into law. The law amended the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA) and assigned responsibility to the Department of Labor for the implementation of several provisions of IMMACT relating to the entry of certain categories of employment-based immigrants, and to the temporary employment of certain categories of nonimmigrants. One of the major provisions of IMMACT the Department of Labor (DOL or Department) is charged with implementing governs the entry of H-1B aliens in specialty occupations or as fashion models of distinguished merit and ability to work temporarily in the United States (U.S.) for a period of up to six years. 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 U.S.C. 1182(n); and 8 U.S.C. 1184(c). The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102-232, 105 Stat. 1733 (December 12, 1991), amended INA and IMMACT, substantially changing portions of the H-1B labor condition application program, retroactive to October 1, 1991.

IMMACT redefined and narrowed the occupational scope of the prior H-1B visa category. Aliens of distinguished merit and ability who had been previously admitted under the H-1B visa category may now be eligible for entry under one of two new visa classifications (O and P) which have been established for aliens with extraordinary ability, persons accompanying aliens, and athletes and entertainers. 8 U.S.C. 1101(a)(15)(O) and 1101(a)(15)(P); see also 8 U.S.C. 1184(g)(1)(C). DOL has no operational responsibilities under the O and P visa provisions of IMMACT. Under INA as amended by IMMACT and MTINA, the H-1B visa category is designated for aliens who are coming temporarily to the U.S. to perform services in a "specialty occupation," as defined in section 214(i)(1) of the INA, or as fashion models of distinguished merit and ability. See 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i)(1). The Immigration and Naturalization Service (INS) makes determinations on whether a job opportunity is in a specialty occupation or as a fashion model of distinguished merit and ability.

The H-1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In addition, an alien in a specialty occupation must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience in the

specialty equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2).

The H–1B category of "fashion model" requires that the alien be of distinguished merit and ability. 8 U.S.C. 1101(a)(15)(H)(i)(b).

INS makes determinations on an alien's qualifications for a job opportunity, specialty occupation, and distinguished merit and ability as a fashion model. The INA, as amended by IMMACT and MTINA, establishes a cap of 65,000 on the number of aliens who may be issued H–1B visas annually, and provides a process for protecting the wages and working conditions of workers. 8 U.S.C. 1182(n) and 1184(g)(1)(A).

The H–1B process begins with the requirement that a prospective H–1B employer file a labor condition application on Form ETA 9035 with the regional office of the Employment and Training Administration having jurisdiction over the State in which the position is located. 8 U.S.C. 1182(n). In this application, the employer is required to attest that: (1) It will play H–1B nonimmigrants no less than the greater of the prevailing wage or actual wage for the occupation; (2) it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; (4) it has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H–1B nonimmigrant, or, if there is no bargaining representative, that it has posted such notice at the place of employment. Further, the employer must provide the information required in the application about the number of aliens sought, occupational classification, job duties, wage rate and conditions under which the aliens will be employed, date of need, and period of employment.

Finally, an important part of the process consists of a complaint and enforcement provision. DOL will accept complaints from any aggrieved party about an employer's failure to meet a specified condition or misrepresentation of a material fact in the application. If DOL determines that a reasonable basis for the complaint exists, DOL will investigate, provide the employer and other interested parties an opportunity for a hearing, and may assess sanctions including civil money penalties. 8 U.S.C. 1182(n)(2).

III. The Process of Developing Interim Final Regulations

In developing the interim final regulations, the Department considered a number of issues pertaining to the filing of labor condition applications by employers seeking to employ H–1B nonimmigrants including: (1) Which employers may file a labor condition application for H–1B nonimmigrants; (2) whether a labor condition application must be filed before or after an H–1B visa is issued; (3) whether DOL should determine that an H–1B occupation is a specialty occupation, including the extent to which the Department will review a labor condition application; and (4) whether documentation should be submitted with the labor condition application and/or maintained at the place of employment. These issues were addressed in an Advance Notice of Proposed Rulemaking (ANPRM), a proposed rule, and an interim final rule inviting comments from all interested parties. 56 FR 11705 (March 20, 1991); 56 FR 37175 (August 5, 1991); and 56 FR 54720 (October 22, 1991).

Comments and recommendations were received from a variety of persons and organizations with respect to the Department's approach to the development and implementation of these regulations. The Department carefully considered the views of these commenters in developing the interim final regulations. Comments on the ANPRM and the proposed rule were discussed in the interim final rule. Such discussion, to the extent still applicable given the revisions mandated by MTINA, is reprinted in this revised interim final rule. 56 FR at 54721–54726.

This revised interim final rule also makes those amendments to the H–1B program necessitated by the enactment of MTINA. The Department has also included clarification regarding employer attestation requirements for "working conditions" and has invited comments regarding possible changes regarding "in-kind" wages. In addition, the comment period on the interim final rule is extended, so that comments may be made on these amendments.

A. Labor Condition Application Process and Requirements

The Department believes that Congress, in enacting IMMACT and MTINA, intended to provide greater protection than under prior law for workers, without interfering with an employer's ability to obtain the H–1B nonimmigrants it needs on a timely basis. Accordingly, the regulations provide that DOL review be limited to determining whether a labor condition application is complete and contains no obvious inaccuracies (including whether the Wage and Hour Division (Administrator) has previously disqualified the employer from employing H–1B nonimmigrants). Congress, in section 303 (a)(7)(A) and (a)(7)(B)(iii) of MTINA, has confirmed this streamlined approach. 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1182(n)(1). In addition, Congress mandated in MTINA that the "certification described in section 101(a)(15)(H)(i)(b)" be provided within 7 days of the date of the filing of the application, unless the application is incomplete or obviously inaccurate. 8 U.S.C. 1182(n)(1); Pub. L. 102–232 sec. 303(a)(7)(B)(iii).

In implementing the protection for workers that IMMACT intends, however, the procedures and documentation requirements are sufficiently specific to enable investigations of complaints against employers and enforcement of sanctions where necessary. Under IMMACT, protection of workers is provided through the complaint process. The interim final regulations set forth a process which: (1) Requires labor condition applications that are specific with respect to employer statements and promises; (2) limits DOL's review of a labor condition application to a simple check to assure that it is completed, signed, and contains no obvious inaccuracies (which includes whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H–1B nonimmigrants); (3) describes the information that employers must retain to document the validity of their statements; and (4) establishes a system for the receipt of complaints, and their investigation and disposition, including the imposition of penalties where warranted. The interim final rule assigns to the Employment and Training Administration (ETA) DOL's role in certifying and processing applications; and to the Wage and Hour Division of the Employment Standards Administration (ESA) DOL's role in investigating complaints and assessing penalties.

1. Who May File a Labor Condition Application?

In developing the interim final regulations, the Department considered a number of issues relating to the eligibility of an employer to file a labor condition application, including: Whether an H–1B employer must have a physical location in the U.S. or otherwise be able to prove it is doing business in the U.S. at the time a labor

condition application is filed; and whether the alien must be paid in U.S. currency. The Department received comments on these and several related issues. Several commenters indicated that current practice did not require a U.S. employer, or even the presence of an employer in the U.S., and that payment to the H–1B nonimmigrants was often not made in U.S. currency. One commenter stated that H–1B nonimmigrants were not always paid while in the U.S. Instead, their salaries were credited to accounts in their home countries, and, while in the U.S., the workers were provided living expenses only and those expenses were paid in U.S. dollars.

The Department believes that, in order to implement the complaint and enforcement provisions of IMMACT, H–1B employers must maintain a legal presence in the United States. In the interim final regulations, the Department interprets this to mean that an H–1B employer must have an Internal Revenue Service (IRS) employer identification number and make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment. In addition, the interim final regulations do not require the payment to the H–1B nonimmigrant in U.S. currency.

Consideration was also given to whether a job contractor should be treated as an employer for H–1B purposes. The term job contractor refers to an employer whose employees perform work at job sites of other employers but who are paid by the job contractor and are its employees. In the interim final regulations, job contractors are treated like any other employer and are bound by the regulations applicable to all H–1B employers. The Department notes that the law requires the payment of wages which are at least equal to the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater. Use of a job contractor will not permit circumvention of this requirement; the interim final regulations require that an H–1B nonimmigrant receive wages which are at least the higher of the actual wage at the worksite or the local area prevailing wage for the occupation.

Many questions have been received by the Department regarding whether attorneys may file applications on behalf of employers. In general, attorneys may file applications on behalf of employers, but the application must be signed by the employer or its agent. However, if an attorney wishes to act in a representational capacity or to receive from ETA the certified application or a notice that the application has not been certified, the attorney must submit to the ETA Regional Office an INS Form G–28, Notice of Appearance as Attorney, which names the employer as his or her client.

2. Filing Sequence

The INA requires that before the alien can be granted H–1B status, the Department shall determine and certify to the Attorney General that the employer has filed with DOL a labor condition application. MTINA also specifies that the Department shall certify the application, provided it is complete and contains no obvious inaccuracies, within 7 days of the date of filing. The interim final regulations therefore require that the employer must file a labor condition application and receive certification from DOL before an H–1B petition can be submitted to INS.

DOL considered whether the amendments enable applications to be filed at ETA simultaneously with, or subsequent to, the filing of the H–1B visa petition with INS. However, the INA, as amended by MTINA, states that the Secretary of Labor "determines and certifies to the Attorney General that the intending employer *has filed with* the Secretary an application (emphasis added) * * *" The law further states that the Secretary "shall review such application for completeness and obvious inaccuracies * * *" and unless the application is incomplete or contains obvious inaccuracies "the Secretary shall provide the certification * * * within 7 days of the date of filing the application." The Department interprets this language to mean that DOL must review and certify the application before the employer may file H–1B visa petitions with the INS. INS, however, is the entity to decide and determine what documents will constitute an acceptable petition for an H–1B visa.

3. Effect of MTINA on Previously Filed Applications

MTINA amended the wage requirement that an employer pay H–1B nonimmigrants and "other individuals employed in the occupational classification" the higher of the actual wage or the prevailing wage. Such wage requirement now applies only to H–1B nonimmigrants and no longer extends to U.S. workers. Because the MTINA amendments to the H–1B program are retroactive to October 1, 1991, they take precedence over IMMACT and the Department's October 22, 1991, interim final rule. MTINA's provisions therefore apply to applications filed pursuant to the original interim final rule.

The Department considered whether employers who filed applications pursuant to the original interim final rule should refile a new application that reflected the modification in the wage requirement mandated by MTINA and concluded that since the new requirement is a lesser one which is completely subsumed within the previous requirement, requiring employers to refile would be not only burdensome but unnecessary. The Department has decided, instead, that all attestations filed prior to MTINA will be considered to be in full compliance with the new regulations and that all attestation elements of previously filed applications will be fully enforceable except Item 8(a) on the ETA Form 9035. In its place, a lesser attestation will be enforced. On the original Form ETA 9035, under Item 8(a), employers attested that:

> H–1B nonimmigrants and other similarly employed workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is higher.

Employers will be held to the following attestation, which has been substituted for item 8(a) on the revised Form ETA 9035:

> H–1B nonimmigrants will be paid the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of intended employment, whichever is higher.

The new attestation element for Item 8(a) reflects MTINA's provision that only H–1B nonimmigrants be paid the higher of the actual wage or the prevailing wage. (This change is discussed fully under the heading "Labor Condition Statements.")

4. Part-time Employment

The Department is continuing the long-standing practice of approving part-time employment for temporary professional workers in the H–1B program. The great majority of commenters opposed the imposition of any limitation on parttime employment. These commenters argued that there is no statutory basis for excluding part-time work under the H-1B program and suggested that the economy would be harmed if H–1B nonimmigrants were no longer permitted to enter for parttime

jobs. Commenters also indicated that it is not unusual for an alien to be needed on a one-time project basis where a 40-hour work week is not typical. A few commenters favored eliminating or limiting part-time employment because the new ceiling on the annual number of H-1B visas could be quickly exhausted by numerous H-1B nonimmigrants working only a few hours per week. The Department agrees with the views of the majority of commenters and the interim final regulations do not prohibit part-time employment. Complaints alleging that working conditions of U.S. workers have been adversely affected by the employment of H-1B nonimmigrants, including part-time H-1B nonimmigrants, by, for example, eliminating or otherwise curtailing permanent jobs and/or fringe benefits for U.S. workers, would be investigated by the Department.

5. Multiple Employers

Under the current practice, H-1B nonimmigrants may work for more than one employer. The Department believes that there is no statutory basis for changing this practice. In addition, there appear to be situations where highly specialized skills and knowledge are needed by more than one employer simultaneously. Therefore, the interim final regulations continue to permit H-1B nonimmigrants to work for more than one employer, provided that each employer has filed a labor condition application.

6. Occupational Scope

Under the interim final regulations, an employer may file a single labor condition application for more than one alien in more than one occupational classification, as long as the application clearly names each occupational classification by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job. A listing of the three-digit occupational groups for professional, technical, and managerial occupations and fashion models is included at appendix 2 to this document (Appendix 2 is not to be cofidied in the CFR but will be provided as an attachment to the Form ETA 9035). For each occupational classification the employer must indicate the number of aliens to be employed, the rate of pay, the starting and ending dates of the H-1B aliens' employment, and the location of each intended place of employment.

It must be emphasized that the Department will not utilize the three-digit occupational groups code for prevailing wage purposes, but rather, for keeping track of and reporting what occupations are employed under the H-1B visa category. Employers are cautioned that, in fact, occupational classifications at the three-digit level are too broad to meet the requirements needed in order to determine a prevailing wage.

7. Labor Condition Application Validity Period

The period of authorized admission for an alien nonimmigrant on an H-1B visa normally may not exceed six years. The interim final regulations provide that the acceptance of a labor condition application be valid for a period of up to six years, depending upon the period of intended employment stated in the labor condition application. The interim final regulations place no specific time limit on when a labor condition application, once certified by DOL, must be used. However, since IMMACT requires the employer to specify the period of intended employment, there will be a practical limitation on the extent to which a certified labor condition application can be held without being used.

B. Labor Condition Statements

1. Required Wages

The INA, as amended by IMMACT and MTINA, requires that the wages paid to H-1B nonimmigrants be at least the higher of the actual wage rate paid to all other workers with similar experience and qualifications for the specific employment in question or the prevailing wage rate for the occupational classification in the area of employment. The amended INA does not preclude an employer from paying H-1B nonimmigrants more than the higher of the actual wage or the prevailing wage. The amended INA places the responsibility on the employer to establish the required wage rate that it must pay an H-1B nonimmigrant based on the best information available at the time the application is filed with the Department.

Much concern was raised by the employer community—particularly institutions of higher education—regarding the wage requirements of IMMACT and the implementation of those requirements by DOL. Under IMMACT, the employer was required to pay the higher of the actual or the prevailing wage for an occupation to both H-1B nonimmigrants and "to other individuals employed in the occupational classification and in the area of employment."

MTINA amended the INA/IMMACT wage requirements in three major ways: (1) the wage obligation now applies only to the H-1B nonimmigrant and no longer extends to "other individuals employed in the occupational classification * * *"; (2) the actual wage now must be determined on the basis of what the employer pays "to all other individuals with similar experience and qualifications for the specific employment in question"; and (3) the wage the employer is required to pay must be "based on the best information available as of the time of filing the application" with the Department.

a. *Actual wage.* The actual wage level is that paid by the employer to all other individuals with similar experience and qualifications as the H-1B nonimmigrant for the specific employment in question at the place of employment. In determining the actual wage level paid to other individuals employed in the specific occupation in which an H-1B nonimmigrant is to be employed, Congress intended that the following factors be considered:

i. Experience. Is the work experience of other individuals employed by the employer in the specific occupation at issue substantially the same as that possessed by the H-1B nonimmigrant—e.g., length of experience; type of experience, such as supervisory; or depth or breadth of experience in the relevant field(s)?

ii. Qualifications. Are the job qualifications of the employer's other employees in the specific occupation at issue substantially the same as the H-1B nonimmigrant's qualifications—e.g., advanced degree(s), particular skills or abilities required? If not, are the dissimilar qualifications bona fide and relevant for the job? Are these differences formally reflected in the employer's pay system as a basis for compensation distinctions among employees?

iii. Education. Are the educational attainments or achievements of the H-1B nonimmigrant and other individuals employed in the specific employment similar—e.g., advanced degree(s) required; educational achievements such as grade point average or class rank; strong positive reputation of the University attended?

iv. Job responsibility and function. Are the H-1B nonimmigrant's actual set of job duties, responsibilities and functions substantially similar to those of other workers employed in the specific occupation at issue?—e.g., are they similar with respect to their major or significant tasks? (Note: the job title alone is not dispositive of this issue. While like job titles presume like jobs with similar job duties, responsibilities and functions, this presumption may be rebutted with information regarding

actual duties, responsibilities and functions. Further, different job titles alone are meaningless if the job duties, responsibilities and functions are substantially the same.)

v. Specialized knowledge. Is there any specialized knowledge possessed by the H–1B nonimmigrant or other individuals—e.g., specialized research field—that warrants a difference in pay?

vi. Other legitimate business factors. Are there other legitimate business factors which can be shown to provide a bona fide basis for justifying different compensation levels for H–1B nonimmigrants and other workers employed in the specific occupation? "Legitimate business factors" are those that it is reasonable to conclude are necessary because they are related to the job in question, conform to recognized principles, or can be demonstrated by accepted rules and standards. Examples might include: Professional distinctions such as publications; development of a particular patent; recipient of an international prize; or other distinguishable; meritorious performance rewarded by an existing pay system. Some examples of "illegitimate" factors to account for pay differentials are: (a) Sex; (b) race; (c) national origin; (d) age; (e) religion; (f) alien willing to work for less; (g) alien salary parity with peers in their country of origin; or (h) alien abilities/qualifications irrelevant to the position.

In determining the actual wage level for the H–1B nonimmigrant, the employer shall consider the wage level paid to all other individuals with similar experience and qualifications who are in the same specific position—i.e., perform the actual set of duties and responsibilities to be performed by the H–1B nonimmigrant. The Department acknowledges that in rare circumstances the H–1B nonimmigrant may be sought for employment in a truly unique position, i.e., one which is unlike any other position at the workplace in regard to the factors described above. However, the Department cautions employers that every few positions would be considered by DOL to be truly unique, since this distinction cannot be established through differing job titles or minor variations in day-to-day work assignments where other individuals with similar experience and qualifications perform substantially the same duties and responsibilities as the H–1B nonimmigrant. When a truly unique job does exist for the H–1B nonimmigrant at the place of employment, the "actual wage" required by the INA shall equal the wage paid by the employer to the H–1B nonimmigrant. Employers must keep in mind that the "truly unique job" concept applies *only* to the employer's obligation regarding the payment of "actual wage" and does not extend to its obligation regarding "prevailing wage."

The following examples (all of which are premised on the assumption that the actual wage is no less than the prevailing wage) are intended to illustrate the factors discussed above:

Example #1

• Worker A is paid $10.00 per hour and supervises two employees. Worker B, who is equally qualified and performs substantially the same job duties except for supervising other employees, is paid $8.00 per hour because he/she has no supervisory responsibility.

The compensation differential is acceptable because it is based upon a relevant distinction in job duties, responsibilities, and functions: the difference in the level of supervision provided by the two employees. The actual wage for workers in this occupation at the worksite with supervisory responsibility is $10.00 per hour; the actual wage for workers in this occupation at the worksite without supervisory responsibility is $8.00 per hour.

Example #2

• Systems Analyst A has experience with a particular software which the employer is interested in purchasing, of which none of the employer's current employees have knowledge. The employer buys the software and hires Systems Analyst A on an H–1B visa to train the other employees in its application. The employer pays Systems Analyst A more than its other Systems Analysts who are otherwise equally qualified and otherwise perform substantially the same job duties.

The compensation differential is acceptable because of the distinction in the specialized knowledge and the job duties of the employees. Systems Analyst A, in addition to the qualifications and duties normally associated with this occupation at the employer's worksite, is also specially knowledgeable and responsible for training the employer's other Systems Analysts in a new software package. As a result, Systems Analyst A commands a higher actual wage.

Example #3

• An employer seeks a scientist to conduct AIDS research in the employer's laboratory. Research Assistants A (a U.S. worker) and B (an alien) both hold Ph.D's in the requisite field(s) of study and have the same number of years of experience in AIDS research. However, Research Assistant A's experience is on the cutting edge of a breakthrough in the field and his/her work history is distinguished by frequent praise and recognition demonstrated in writing and through awards. Research Assistant B (the alien) has a respectable work history but has not conducted research which has been internationally recognized. Employer pays Research Assistant A $10,000 per year more than Research Assistant B in recognition of his/her unparalleled expertise. The employer now wants to hire a third Research Assistant on an H–1B visa to help with the work.

The differential between the salary paid Research Assistant A (the U.S. worker) and Research Assistant B (the alien) is acceptable because it is based upon the specialized knowledge of Research Assistant A, demonstrated in writing. The employer is not required to pay Research Assistant B the same wage rate as that paid Research Assistant A, even though they may have the same job titles and substantially the same duties and responsibilities. The actual wage required for the third Research Assistant, to be hired on an H–1B visa, would be the wage paid to Research Assistant B unless he/she has internationally recognized expertise similar to that of Research Assistant A.

Example #4

• Employer located in City X seeks experienced mechanical engineers. In City X, the prevailing wage for such engineers is $49,500 annually. Employer pays its mechanical engineers with 5 to 10 years of experience between $50,000 and $75,000 per year. Applicants A, B, and C have virtually identical experience and qualifications and will perform substantially the same job duties. Applicant A is from Japan, where he/she earns the equivalent of $80,000 per year. Applicant B is from France and had been earning the equivalent of $40,000 per year. Applicant C is from India and had been earning the equivalent of $20,000 per year. Employer pays Applicant A $80,000 per year, Applicant B $50,000, and Applicant C $20,000. Employer has had a long-established system of maintaining the home-country pay levels of foreign temporary workers.

The INA requires that the employer pay the H–1B nonimmigrant at least the actual wage or the prevailing wage, whichever is greater, but there is no prohibition against paying the H–1B nonimmigrant a greater wage. Therefore, Applicant A may lawfully be paid the

$80,000 per year. Applicant C's salary, however, at a rate of $20,000 per year, is unacceptable under the law, even given the employer's "long-established system," since it would be below both the actual wage and the prevailing wage. The latter situation is an example of an illegitimate business factor—i.e., an established system to maintain salary parity with peers in the country of origin—which yields a wage below the required wage levels.

b. *Prevailing wage.* Under the INA, as amended by IMMACT and MTINA, the employer is required to pay wages to the H–1B nonimmigrant that are no less than the actual wage or "the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application * * *." In enacting this provision, Congress recognized that employers use a variety of legitimate methods for determining appropriate wages; Congress did not mandate changes to these legitimate practices, nor require the use of any specific methodology to obtain the prevailing wage. These interim final regulations effectuate the Congressional directive by providing a prospective H–1B employer with a choice of alternative ways to obtain the prevailing wage: (1) Use a Davis-Bacon Act or the McNamara-O'Hara Service Contract Act; (2) use a collective bargaining agreement; (3) request it from a State Employment Security Agency (SESA); (4) obtain it from an independent authoritative source; or (5) rely on another legitimate source. Regardless of the source used, the figure obtained as the "prevailing wage" must equal the average of the rate of wages paid to workers similarly employed in the area of intended employment. "Similarly employed" means having substantially comparable jobs in the occupational classification in the area of intended employment.

These regulations specify that employers have an affirmative obligation to obtain the prevailing wage rate for the occupation(s) within which the H–1B nonimmigrant(s) will be employed. This prevailing wage determination must be based on the "best information" available, which the Department has identified in these regulations. Where the employer uses the SESA, union contracts, or federal statutes as a source as described by the Department, the employer will be protected against complaints alleging an inaccurate prevailing wage. A description of "independent authoritative source" surveys which employers may use is also contained in the regulations, which explain limited circumstances in which the Department will go behind the survey to determine the prevailing wage in the event of a complaint. Where the employer uses another legitimate source, the employer must be prepared to show, in the event of a complaint, that the source for the wage determination meets the standards set in the regulations. If this is shown, the Department may accept this determination of prevailing wage. If the employer cannot sufficiently demonstrate the legitimacy of its prevailing wage and the Department is required to make a post-attestation prevailing wage determination through the SESA, no wage violation will be found where the employer is, in fact, paying at least the higher of the actual or prevailing wage. However, if the employer cannot sufficiently demonstrate the legitimacy of its prevailing wage and the employer is paying beneath the required wage rate, back pay will be assessed and, depending upon the facts and circumstances, the employer may be found to have willfully violated the wage requirement, which will result in debarment and may result in civil money penalties. If the employer ignores its affirmative obligation to obtain a prevailing wage rate and is found to have paid wages beneath the required wage rate, back pay will be assessed and the employer will be found to have willfully violated the wage requirements, which will result in debarment and may result in civil money penalties.

i. Sources. The Department believes the following sources to be the "best information" for determining the prevailing wage. These sources are listed in their order of priority and are premised on their accurate application to the occupation which encompasses the specific employment in question. Employers are not mandated to use any specific source.

1. A wage rate established by DOL under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act.

2. A collectively bargained wage rate contained in a union contract to which the employer is a party.

3. A prevailing wage determination provided in writing by the State Employment Security Agency. See 20 CFR 656.40.

4. A prevailing wage obtained from an independent authoritative source, as defined in § __.715 of the regulations.

5. A prevailing wage obtained from another legitimate source of wage information, as described in § __.730(e)(1)(ii)(C)(*3*) of the regulations.

ii. SESA. The employer should submit a request for a prevailing wage determination, in writing, to the SESA, which will determine whether the occupation is covered by a Davis-Bacon Act or Service Contract Act wage survey, and, if not, whether the SESA has on file current prevailing wage information for the occupation. This information shall be provided by the SESA to the employer in writing in a timely manner. Where the prevailing wage is not immediately available through one of these sources, the SESA will conduct a prevailing wage survey using the methods outlined at 20 CFR 656.40. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E. Any such challenge, however, shall not require the SESA to divulge any employer wage data which was collected under the promise of confidentiality.

If the employer is unable to wait for the SESA to produce a prevailing wage for the requested occupation, the employer may rely on other legitimate sources of available wage information. If the employer later discovers, upon receipt of the prevailing wage determination from the SESA, that the information relied upon produced a wage that was below the SESA-determined prevailing wage for the occupation for the area of intended employment and the employer was paying below the required wage, no violation will be found if the employer retroactively compensates the H–1B nonimmigrant(s), within thirty days of obtaining the SESA determination, for the difference between the wage paid and the prevailing wage.

In all situations where the employer obtains the prevailing wage determination from the SESA and maintains a copy of the SESA document, the Department will accept that prevailing wage determination as correct and in an investigation will not question the determination's validity. A complaint alleging the inaccuracy of a SESA prevailing wage determination, in these cases, will not be investigated.

iii. Independent authoritative source. These regulations also permit the employer to use an independent authoritative wage source, as defined in § __.715 of subpart H, in lieu of a SESA prevailing wage determination. Where all criteria for independent authoritative

source surveys are met, and where the survey has been applied correctly to the occupation and to the geographic area, the Department will not investigate a complaint which merely alleges that the attested prevailing wage is incorrect, unless the Department has significant evidence regarding the prevailing wage for that occupation in the area which shows that the prevailing wage varies substantially from the attested wage. The employer may arrange for the conduct of a prevailing wage survey by an independent authoritative source; such a procedure must be free of fraud or misrepresentation, must comply with all the criteria regarding the independent authoritative source, and must apply sound survey methodology (20 CFR 656.40 and TAG No. 656) to current wage data.

iv. Other legitimate source. If the employer chooses to rely on other legitimate sources of wage data to obtain the prevailing wage pursuant to § ___.730(e)(1)(ii)(C)(*3*) of the regulations, the employer will be required to demonstrate the legitimacy of the prevailing wage in the event a complaint is filed. If the employer is unable to demonstrate the legitimacy of the wage to the satisfaction of the Department in the event of an investigation, the Department will make its own prevailing wage determination through the SESA and will assess back wages based on that determination. For example, a legitimate wage would be based on a survey that is reasonable and consistent with recognized standards and principles used in the field; and would be fully documented and supportable. The Department will not, in any case, undertake to "validate" the methodology used in the employer's "other" source, nor conduct research to determine the source's legitimacy or accuracy in calculating the prevailing wage; this burden remains with the employer.

In summary, regardless of the source of data which a prospective H–1B employer chooses to use, the employer shall have the burden of proving the validity of any prevailing wage obtained from a non-SESA source in the event a complaint is filed. The employer must therefore develop and retain documentation regarding the method and data it used to obtain the prevailing wage. The employer also is required to update the documentation supporting the prevailing wage rate every 24 months from the date the application is certified, and to pay the H–1B nonimmigrant at least the greater of the actual or the updated prevailing wage for the specific employment in question for the entire period of the H–1B nonimmigrant's employment. Furthermore, if the employer's failure to pay the required wage is found to have been willful, the employer will be assessed civil money penalties and be debarred from the employment of aliens.

c. *In-kind wages.* Employers are required to determine the applicable "actual wage" and "prevailing wage" based only on cash wages paid (excluding fringe benefits). However some employers have represented that, in the past, foreign workers who earned less than U.S.-level wages in their home country have been paid a cash wage lower than U.S. workers during temporary employment in the U.S., but have received "in-kind" perquisites or payments other than cash, so that their total compensation package is equivalent to that of U.S. workers and so that their re-entry into their home-country wage scale is not a difficult adjustment. Although the final policy decision has not yet been made, the Department is considering whether to permit the H–1B employer to claim wage credit for the actual cost or fair market value (whichever is less) of such perquisites or payments (excluding fringe benefits) in determining whether the employer is meeting its wage payment obligations. The Department contemplates that such payments or perquisites would be considered as creditable H–1B wages only if: (1) They are for the benefit of the H–1B nonimmigrant(s) and do not, in any way, accrue to the benefit of the employer; and (2) they are provided only to the H–1B nonimmigrant(s) and are not provided to the employer's other (non-H–1B) employees. Comments are invited as to whether such payments should be credited, and as to the types of payments or perquisites that, under these limitations, would be appropriate for consideration in this regard.

Since the "in-kind" wage credit is in recognition, in part, of the nonimmigrant's future return home, it is inappropriate for use in the permanent alien labor certification program and is not being considered for that program. See 20 CFR part 656. A further distinction is the continuing enforcement role DOL has under the H–1B program, which does not exist for the resident alien worker. See 8 U.S.C. 1182 (a)(5)(A) and (n)(2).

On policy grounds, "in-kind" wage credit is also not being considered for the H–2A farmworker, H–2B nonprofessional worker, H–1A registered nurse, and F–1 student programs. In each of those programs the occupation is low-paid (e.g., H–2A farmworkers) or Congress has expressed an intent to raise the wages and working conditions of the workers (e.g., H–1A nurses).

2. Prevailing Working Conditions

The INA requires employers to state that the employment of H–1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed. 8 U.S.C. 1182(n)(1)(A)(ii). MTINA made no changes to this statutory requirement regarding the working conditions statement. The Department's interpretation is that the INA intends that prevailing working conditions be treated according to the current regulations for the permanent alien labor certification program. See 20 CFR part 656. These regulations therefore require that prevailing working conditions be determined on a post-complaint basis as is currently done in the permanent program. See 20 CFR 656.24(b)(3). Thus, in the event of a complaint under the H–1B program, the employer must present credible proof of prevailing working conditions for the occupations at issue. Such proof may include surveys conducted by employers, published independent studies or articles which discuss the conditions in the industry and locale, and other relevant information. The regulations have been clarified to correct any misperception employers may have that they must conduct a "prevailing working conditions survey" prior to filing an application.

3. Supporting Documentation

The Department considered whether employers should be required to submit supporting documentation with the labor condition application or whether such documentation should be maintained by the employer at the place of employment. The amended INA requires that a copy of each application and such accompanying documents as are necessary be available for public examination at the employer's principal place of business or place of employment.

The Department has concluded, and the regulations provide, that the employer need not submit supporting documentation to DOL with the labor condition application, because the Department will not examine the application in detail prior to certification. Instead, the employer is required to develop documentation to support certain labor condition application elements and maintain it at the place of employment or the

employer's principal place of business in the U.S., so that the employer can carry its burden of proof in the event of an investigation.

The employer is required to develop and maintain supporting documentation regarding the actual wage, the prevailing wage, and the required notice to employees. There are no specific documentation requirements regarding the "no strike or lockout" and "working conditions" attestations, but the employer has the burden of proving the validity of its statements in the event a complaint is filed. The Department suggests that employers keep any pertinent information they may have regarding prevailing working conditions; such information could, for instance, document the fringe benefit plan at the employer's facility.

The application and the required supporting documentation for the application must be maintained by the employer for a period of one year beyond the end of the period of employment specified on the labor condition application or one year from the date the labor condition application was withdrawn, except that, in the event a timely complaint is filed, the documentation must be retained until the complaint is resolved through the enforcement process set out in the regulations. Payroll records, documenting the payment of the required wages, must be retained for three years from the date(s) of the creation of the record(s), except that in the event a timely complaint is filed, all payroll records must be retained until the complaint is resolved through the enforcement process.

The documentation requirements of the INA were amended by MTINA in one particular section, having to do with public access and notice. This does not affect the overall documentation to be maintained by the employer in support of its application in the event a complaint is filed which is not available to the public. One sentence in INA Section 212(n)(1)(D) (8 U.S.C. 1182(n)(1)(D)) was changed from:

> The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application *(and accompanying documentation).*

to:

> The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (*and such accompanying documents as are necessary).* [Emphases added.]

To implement this modification, and to achieve the statutory purpose of assuring that the public has sufficient information to be aware of and understand the bases for an employer's application, and the representations and commitments therein, the Department has revised the regulations to specify the minimum requirements for documents that must be made available to the public. Employers are required to make available for public examination a copy of each labor condition application filed, accompanied by:

(1) Documentation which provides the wage rate to be paid the H-1B nonimmigrant and a description of the system that the employer used to set the "actual wage"—*e.g.,* memorandum to the file summarizing the system or a copy of the employer's pay system (payroll records are not required, although they must be made available to the Department in an enforcement action).

(2) A copy of the documentation the employer used to establish the "prevailing wage" for the occupation(s) for which the H-1B nonimmigrant(s) is/are sought—*e.g.,* copy of SESA prevailing wage determination, memorandum documenting "other legitimate source" relied upon as to the prevailing wage, the "independent authoritative source" document, or documentation showing the wage finding for the "other legitimate source" (a general description of the source and methodology is all that is required to be made available for "public" examination; the underlying individual wage data relied upon to determine the prevailing wage is not a "public" record, although it must be made available to the Department in an enforcement action); and,

(3) A copy of the document(s) with which the employer has satisfied the union/employee notification requirement of § ___.730(h).

C. DOL Review of Labor Condition Applications

1. Level of Review

MTINA amends the INA to require the Department to review the labor condition application only "for completeness and obvious inaccuracies." 8 U.S.C. 1182(n)(1). Unless it is found that the application is incomplete or contains obvious inaccuracies (which includes whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H-1B nonimmigrants), certification shall be provided within 7 working days of the date the application is received and date-stamped by the Department. *Id.*

2. Specialty Occupation

The INA defines a "specialty occupation" as one which requires the theoretical and practical application of a body of highly specialized knowledge, and which requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). 8 U.S.C. 1184(i)(1). In addition, the INA requires the prospective H-1B alien to possess the following qualifications: Full state licensure to practice in the occupation, if required; and either (i) completion of a bachelor's or higher degree in the specific specialty (or its equivalent), or (ii) experience in the specialty equivalent to the completion of such a degree and expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i)(2).

It has been the responsibility of INS to determine whether an alien and the occupation met the requirements for an H-1B visa. The interim final regulations reflect a continuation of this approach. INS will continue to have, under the H-1B program, the responsibility for determining whether the occupation and alien meet the requirements for an H-1B visa, after receiving the employer's petition with the DOL-approved labor condition application attached. A determination by INS that the occupation or alien does not qualify for an H-1B visa is appealed only through relevant INS and Department of Justice procedures.

This approach is in keeping with the intent of the INA—that DOL review be simple and streamlined, and that worker safeguards be provided by a complaint-driven enforcement system.

3. Fashion Models

It is the responsibility of INS to determine whether an alien and the occupation meet the requirements for an H-1B visa. This interim final rule reflects this approach with respect to aliens in specialty occupations, and this revised interim final rule reflects that INS also will make determinations on whether an H-1B fashion model is of "distinguished merit and ability". 8 U.S.C. 1101(a)(15)(H)(i)(b); Public Law 102-232 sec. 207(b).

D. Confidentiality of Employer Information

Many commenters raised the issue of the confidentiality of employer-provided information. These commenters strongly recommended that the Department make

every effort to protect confidential employer information provided to the Department as part of the labor condition application. While the Department recognizes these concerns, the INA, as amended by IMMACT and MTINA, requires that the employer make available for public examination a copy of the labor condition application and such accompanying documents as are necessary, within one working day after the date on which an application is filed with DOL. 8 U.S.C. 1182(n)(1); see also 8 U.S.C. 1182(n)(1)(C); and Public Law 102-232 section 303(a)(7)(B)(iii). Although the Department does not require any documentation to be submitted to it along with the labor condition application, the regulations require that certain documentation must be available for public examination at the place of employment. In addition, employers should note that if a complaint is filed, an investigation conducted, and a hearing held, any employer information submitted as evidence at the hearing will become a matter of public record; such information may well be more extensive than that which the employer must make available for public examination. See 8 U.S.C. 1182(n)(2).

E. Discouraging Frivolous Complaints

Many commenters urged the Department to take steps to discourage frivolous complaints. The Department notes that IMMACT itself addresses this concern by permitting only "any aggrieved person or organization (including bargaining representatives)" to file a complaint. 8 U.S.C. 1182(n)(2)(A). In addition, under the Department's interim final regulations an investigation will be initiated only after DOL determines that there is reasonable cause to believe a violation has occurred.

F. Complaint, Investigation and Hearing

Section 212(n)(2) of INA requires that the Department establish a system to conduct investigations to determine whether an employer failed to meet a condition specified in the labor condition application or misrepresented a material fact on its application. 8 U.S.C. 1182(n)(2). The regulations provide tht the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint.

G. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 212(n)(2)(B) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination, and issue findings within 60 days of the date of the hearing.

Because of this compressed time frame, the regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing wages and working conditions which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the interim final regulations specify that the Department's rules of evidence shall not apply.

An opportunity for discretionary review by the Secretary is afforded by the interim final regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

H. Penalties

If the employer does not meet the applicable standard regarding wages, working conditions, and strikes or lockouts, notification of bargaining representatives or employees, or misrepresentation of a material fact in the application, it may result in the imposition of administrative remedies: (1) Civil money penalties in an amount not to exceed $1,000 per violation; (2) employers being barred from filing applications or attestations with the Department to employ aliens on either a permanent or temporary basis for at least one year; and (3) employers being ordered to provide for payment of back wages. 8 U.S.C. 1182(n)(2) (C) and (D).

In the MTINA amendments to the INA, Congress created a new standard for the imposition of civil money penalties (CMPs) and the debarment sanction for an H-1B employer's violation of its wage or working conditions obligations. 8 U.S.C. 1182(n)(2)(C); see Public Law 102-232 section 303(a)(7)(B)(iv). Where the Secretary finds that an employer has failed to pay the required wages, the amended statute requires the Department to collect back wages (only for H-1B nonimmigrant employees, not for U.S. workers) "whether or not a [civil money penalty or debarment] penalty * * * has been imposed." 8 U.S.C. 1182(n)(2)(D); see Public Law 102-232 section 303(a)(7)(B) (v) and (vi). The amended statute also specifies that the Department may impose CMPs and shall report the employer to the INS for debarment from the employment of aliens only where the Department finds "a willful failure to meet [the required wage and working conditions] paragraph [of the H-1B provision]". 8 U.S.C. 1182(n)(2)(C). Thus, the statute imposes a "willful" standard for imposition of penalties (CMPs and debarment), but imposes no standard for the severity of wage violations for the collection of back wages. In commenting on this amendment, sponsor Senator Simpson stated that "by [willful failure] we mean a knowing disregard for the requirements of these [wage and working conditions] paragraphs. If an employer establishes a good faith basis for its determinations, that will be a complete defense to a charge of willful failure to meet its obligations." 137 Cong. Rec. S18243 (daily ed. Nov. 26, 1991). Sponsor Senator Kennedy similarly described the intended meaning of "willful failure." 137 Cong. Rec. S18245 (daily ed. Nov. 26, 1991).

The "willful" standard is well established in federal labor standards law, and the Department has concluded (based on settled principles of statutory construction) that Congress knew of this standard and intended for it to be applied in the similar context of the H-1B wage and working conditions requirements. The "willful" standard in question is found in Supreme Court's decision in *Brock* v. *Richland Shoe Co.*, 486 U.S. 128, 133 (1988) applying a provision of the Fair Labor Standards Act (FLSA), where a third year of wages may be recovered only for willful violations. The Court held that an employer is to be found in "willful" violation where the employer "knew or showed reckless disregard for the matter of whether its conduct was prohibited by the (FLSA)." See also *Trans World Airlines* v. *Thurston*, 469 U.S. 111, 127 (1985). The Supreme Court's standard would preclude a finding of "willfulness" where an employer had acted in good faith. In revising the regulations for the assessment of civil money penalties and notification to the Attorney General for debarment of an employer who is found to have willfully failed to pay the required wages or provide the required working conditions. the Department has adopted the Court's standard.

IV. Summary

The Department welcomes comments on any issues addressed in the October 22, 1991, interim final regulations or this revised interim final rule, and on any

issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Effective Date

The interim final rule was effective on October 1, 1991. IMMACT provided that the H–1B program for nonimmigrant aliens in specialty occupations began on that date, and MTINA is retroactively effective as of that date. Public Law 102–232 section 310(a); Public Law 101–649 sec. 231. Absent immediate changes to the standards for this program, employers would not be fully aware of their responsibilities. Further, MTINA requires DOL to issue, by January 2, 1992, interim final or final rules to implement that law's changes to the H–1B program. Public Law 102–232 section 303(b)(8). For those reasons, the Department of Labor has found good cause to exist to make the amendments in this document effective on the statutory effective date of October 1, 1991, without prior notice and comment. 5 U.S.C. 553(d)(3). Nevertheless, the Department invites interested members of the public to comment on the October 22, 1991 interim final rule and on this revised interim final rule, for the period set forth in the "**DATES**" section above.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Fashion models, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages.

Text of the Joint Rule

The text of the interim final joint rule as adopted by ETA and the Wage-Hour Division, ESA, in this document appears below:

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

Sec.

Subpart I—Enforcement of H–1B Labor Condition Applications

Sec.

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

§ ____.700 Purpose, procedure and applicability of subparts H and I.

(a) *Purpose.* The Immigration and Nationality Act (INA), with respect to nonimmigrant workers entering the United States (U.S.) on H–1B visas:

(1) Establishes an annual ceiling of 65,000 (exclusive of spouses and children) on the number of aliens who may be issued H–1B visas;

(2) Defines the scope of eligible occupations for which nonimmigrants may be issued H–1B visas and specifies the qualifications that are required for entry as an H–1B nonimmigrant;

(3) Requires an employer seeking to employ H–1B nonimmigrants to file a labor condition application with and have it certified by the Department of Labor (DOL) before an alien may be provided H–1B status by the Immigration and Naturalization Service (INS); and

(4) Establishes a system for the receipt and investigation of complaints, as well as for the imposition of fines and penalties for misrepresentation or for failure to fulfill a condition of the labor condition application. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), 1184(g)(1)(A), and 1184(i).

(b) *Procedure for obtaining an H–1B visa.* Before a nonimmigrant alien may work in a "specialty occupation" or as a fashion model of distinguished merit and ability in the United States under an H–1B visa, the alien must receive that H–1B visa from the Department of State (DOS). There are certain steps in the process which leads to the issuance of an H–1B visa. These steps shall be followed in sequence and are as follows:

(1) First, an employer shall submit to DOL, and obtain DOL certification of, a labor condition application. The requirements for obtaining a certified labor condition application are provided in this subpart. The labor condition application (Form ETA 9035) and instructions may be obtained from DOL Regional Offices listed in § ____.720 of this part.

(2) After obtaining DOL certification of a labor condition application, the employer may submit a petition (INS Form I–129), together with the certified labor condition application, to INS, requesting H–1B classification for the alien. The requirements concerning the submission of a petition to, and its processing by, INS are set forth in INS regulations. The INS petition (Form I–

129) may be obtained from an INS district or area office.

(c) *Applicability.* Subparts H and I of this part apply to all employers seeking to employ aliens on H–1B visas in specialty occupations or as fashion models of distinguished merit and ability.

§ ___.705 Overview of responsibilities.

Three federal agencies are involved in the process which leads to the issuance of an H–1B visa, and the responsibilities which continue after the visa is issued. The employer also has continuing responsibilities under the process. This section briefly describes the responsibilities of each of these entities.

(a) *Department of Labor responsibilities.* DOL administers the labor condition application process and enforcement provisions.

(1) The Employment and Training Administration (ETA), DOL, is responsible for receiving and making determinations on labor condition applications in accordance with subpart H of this part. ETA is also responsible for compiling and maintaining a list of labor condition applications and shall make such list available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N4456, Washington, DC 20210.

(2) The Employment Standards Administration (ESA), DOL, is responsible, in accordance with subpart I of this part, for investigating and resolving any complaints filed with DOL concerning labor condition applications or the employment of H–1B nonimmigrants.

(b) *Immigration and Naturalization Service (INS) and Department of State (DOS) responsibilities.* The Immigration and Naturalization Service (INS) shall receive the employer's petition (INS Form I–129) with the DOL-certified labor condition application attached. INS is responsible for approving the alien's H–1B visa classification. In doing so, the INS determines whether the occupation named in the labor condition application is a specialty occupation or whether the alien is a fashion model of distinguished merit and ability and whether the qualifications of the alien meet the statutory requirements for H–1B visa classification. If the petition is approved, INS will notify the U.S. Consulate where the alien intends to apply for the visa unless the alien is in the U.S. and eligible to adjust status without leaving this country. See 8 U.S.C. 1184(i). The Department of State, through U.S. Embassies and Consulates, is responsible for issuing H–1B visas.

(c) *Employer's responsibilities.* Each employer seeking an H–1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability has several responsibilities.

(1) The employer shall submit a completed labor condition application on Form ETA 9035 and one copy to the regional office of ETA serving the area where the alien will be employed. If the labor condition application is certified by ETA, a copy will be returned to the employer.

(2) The employer shall make a filed labor condition application and necessary supporting documentation (as identified under this subpart) available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with ETA.

(3) The employer then may submit a copy of the certified labor condition application to INS with a completed petition (INS Form I–129) requesting H–1B classification.

(4) The employer should not allow the alien to begin work, even though a labor condition application has been certified by DOL, until INS grants the alien authorization to work in the United States for that employer.

(5) The employer shall develop sufficient documentation to meet its burden of proof with respect to the validity of the statements made in its labor condition application and the accuracy of information provided in the event that such statement or information is challenged. The employer shall also maintain such documentation at its place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

§ ___.710 Complaints.

Complaints concerning misrepresentation in the labor condition application or failure (including a substantial or willful failure) of the employer to meet a condition specified in the application shall be filed with the Administrator, Wage and Hour Division (Administrator), ESA, according to the procedures set forth in subpart I of this part. The Administrator shall then investigate if reasonable cause is found, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties.

§ ___.715 Definitions.

For the purposes of subparts H and I of this part:

Actual wage means the wage rate paid by the employer to all individuals with experience and qualifications similar to the H–1B nonimmigrant's experience and qualifications for the specific employment in question at the place of employment.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subpart H or I of this part.

Area of intended employment means the area within normal commuting distance of the place (address) of employment where the H–1B alien is or will be employed. If the place of employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of employment. If there is no MSA then the area of intended employment is the area within normal commuting distance of the place of employment.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Authorized agent and *authorized representative* mean an official of the employer who has the legal authority to commit the employer to the statements in the labor condition application.

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Certify means the act of making a certification.

Certifying Officer and *Regional Certifying Officer* mean a Department of Labor official, or such official's designee, who makes determinations about whether or not to certify labor condition applications.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Department and *DOL* mean the United States Department of Labor.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means:

(1) A person, firm, corporation, contractor, or other association or organization in the United States which suffers or permits a person to work within the United States;

(2) Which has an employer-employee relationship with respect to employees under this part, as indicated by the fact

that it may hire, pay, fire, supervise or otherwise control the work of any such employee; and

(3) Which has an Internal Revenue Service tax identification number

Employment and Training Administration (ETA) means the agency within the Department which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the INA on whether to grant visa petitions of employers seeking the admission of nonimmigrant aliens under H–1B visas for the purpose of employment.

INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq*

Independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer which has a recognized expertise in an occupational field.

Independent authoritative source survey means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's application and each succeeding 24-month prevailing wage update. Such survey shall:

(1) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(2) Be based upon recently collected data—*e.g.*, within the 24-month period immediately preceding the date of publication of the survey; and

(3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Occupation means the occupational or job classification in which the H–1B alien is to be employed.

Period of intended employment means the time period between the starting and ending dates inclusive of the H–1B alien s intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application.

Place of employment means the worksite or physical location where the work is performed.

Required wage rate means the rate of pay which is the higher of:

(1) The actual wage for the specific employment in question; or

(2) The prevailing wage rate (adjusted every 24 months) for the occupation in which the H–1B alien is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Speciality occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. The alien in a specialty occupation shall possess the following qualifications:

(1) Full state licensure to practice in the occupation, if licensure is required for the occupation;

(2) Completion of the required degree; or

(3) Experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i). Determinations of specialty occupation and of alien qualifications are made by INS.

Specific employment in question means the set of duties and responsibilities performed or to be performed by the H–1B nonimmigrant at the place of employment.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operation.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

Wage rate means the remuneration (exclusive of fringe benefits) to be paid in terms of amount per hour, day, month or year

§ ____.720 Addresses of Department of Labor regional offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): One Congress Street 10th Floor, Boston, Massachusetts 02114–2021. Telephone: 617–565–4446.

Region II (New York, New Jersey Puerto Rico, and the Virgin Islands): 201 Varick Street, room 755, New York, New York 10014. Telephone: 212–337–2186.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Post Office Box 8796, Philadelphia, Pennsylvania 19101. Telephone: 215–596–6363.

Region IV (Alabama, Florida, Georgia, Kentucky Mississippi, North Carolina, South Carolina, and Tennessee): 1371 Peachtree Street, NE., Atlanta, Georgia 30309. Telephone: 404–347–3938.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 South Dearborn Street, Room 605, Chicago, Illinois 60604. Telephone: 312–353–1550.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): 525 Griffin Street, room 314, Dallas, Texas 75202. Telephone: 214–767–4989.

Region VII (Iowa, Kansas, Missouri, and Nebraska): 911 Walnut Street, Kansas City Missouri 64106. Telephone: 816–426–3796.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, 16th Floor Denver, Colorado 80294. Telephone: 303–844–4613.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): 71 Stevenson Street, Room 830, San Francisco, California 94119. Telephone: 415–744–6647.

Region X (Alaska, Idaho, Oregon, and Washington): 1111 Third Avenue, Suite 900, Seattle, Washington 98101. Telephone: 206–553–5297.

§ ____.730 Labor condition application.

(a) *Who must submit labor condition applications?* An employer, or the employer's authorized agent or representative, which meets the definition of employer set forth in § ____.715 of this part and intends to employ an H–1B alien in a specialty occupation or as a fashion model of distinguished merit and ability shall submit a labor condition application to DOL. Attorneys and agents submitting applications on an employer's behalf shall submit, also, a completed INS Form G–28.

(b) *Where should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § ____.720 of this part in whose geographic area of jurisdiction the H–1B nonimmigrant will be employed. It is the employer's

responsibility to ensure that a complete and accurate application is received by the appropriate regional office of ETA. Incomplete or obviously inaccurate applications will not be certified. The regional office shall process all applications sequentially upon receipt regardless of the method used by the employer to submit the application and shall make a determination to certify or not certify the labor condition application within 7 working days of the date the application is received and date-stamped by the Department. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer as set forth at § ____.760(a)(1) of this part.

(c) *What should be submitted? Form ETA 9035.*

(1) *General.* One completed and dated original Form ETA 9035, or facsimile transmission thereof, containing the labor condition statements referenced in paragraphs (e) through (h) of this section, bearing the employer's original signature (or that of the employer's authorized agent or representative) (see paragraph (b) of this section and § ____.760(a)(1) of this part with respect to applications filed by facsimile transmission) and one copy of Form ETA 9035 shall be submitted to ETA. Copies of Form ETA 9035 are available at the addresses listed in § ____.720 of this part; photocopies of the form also are permitted. Each application shall identify the occupational classification(s) for which a labor condition application is being submitted and shall state for each occupational classification:

(i) The occupation(s), by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;

(ii) The number of H–1B nonimmigrants sought;

(iii) The gross wage rate(s) to be paid to each H–1B nonimmigrant, expressed on an hourly, weekly, biweekly, monthly or annual basis;

(iv) The starting and ending dates of the H–1B nonimmigrants' employment;

(v) The place(s) of intended employment.

(2) *Multiple positions, occupations, and/or places of employment.* The employer may file a labor condition application for a single occupation or for multiple occupations. An employer may file a single labor condition application for more than one occupational classification, and/or for more than one place of employment only if:

(i) Each occupation is a specialty occupation or the alien is a fashion model of distinguished merit and ability;

(ii) All places of employment covered by the application are located within the jurisdiction of a single ETA regional office, or, if the alien(s) is/are to be employed sequentially in various places of employment, the application is to be submitted to the regional office having jurisdiction over the initial place of employment; and

(iii) The information required in this paragraph (c) is provided for each occupational classification for each place of employment.

(3) *Full-time and part-time jobs.* The position(s) covered by the labor condition application may be full-time or part-time or a mix of both.

(d) *Content of the labor condition application.* An employer's labor condition application shall contain the labor condition statements referenced in paragraphs (e) through (h) of this section, which provide that no alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:

(1) The employer is offering and will offer during the period of authorized employment to H–1B nonimmigrants no less than the greater of the following:

(i) The actual wage level paid to all other individuals at the worksite with similar experience and qualifications for the specific employment in question; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed;

(3) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) The employer, at the time of filing the labor condition application:

(i) Has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought; or

(ii) If there is no such bargaining representative, has posted notice of the filing of the labor condition application in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in paragraph (h) of this section; and

(5) The employer has provided the information about the occupation required in paragraph (c) of this section.

(e) *The first labor condition statement: wages.* An employer seeking to employ H–1B aliens in a specialty occupation or as a fashion model of distinguished merit and ability shall state on Form ETA 9035 that it will pay the H–1B aliens the required wage rate.

(1) *Establishing the wage requirement.* The first labor condition application requirement shall be satisfied when the employer signs Form ETA 9035, attesting that, for the entire period of authorized employment, the required wage rate will be paid to the H–1B alien(s); that is, that the wage shall be the greater of:

(i) The actual wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question. In determining such wage level, the following factors should be considered: Experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors. "Legitimate business factors," for purposes of this paragraph (e)(1), means those that it is reasonable to conclude are necessary because they conform to recognized principles or can be demonstrated by accepted rules and standards. Where there are other employees with substantially similar experience and qualifications in the specific employment in question—*i.e.*, they have substantially the same duties and responsibilities as the H–1B nonimmigrant—the actual wage shall be the amount paid to these other employees. Where no such other employees exist at the place of employment, the actual wage shall be the wage paid to the H–1B nonimmigrant by the employer; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment determined as of the time of filing the application and every 24 months thereafter. The employer shall base the prevailing wage on the best information available as of the time of filing the application. The employer is not required to use any specific methodology to determine the prevailing wage and may utilize a SESA, an independent authoritative source, or other legitimate sources of wage data. The Department prefers the following sources to establish the prevailing wage:

(A) A wage determination for the occupation and area issued under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see also 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see also 29 CFR part 4) (which shall be available through the SESA);

(B) A union contract which was negotiated at arms-length between a union and the employer, which contains

a wage rate applicable to the occupation;

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii) (A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be based on the best information available. The Department believes that the following prevailing wage sources are, in the order of priority, the most accurate and reliable:

(*1*) *A SESA Determination.* Upon receipt of a written request for a prevailing wage determination, the SESA will determine whether the occupation is covered by a Davis-Bacon or Service Contract Act wage survey, and, if not, whether it has on file current prevailing wage information for the occupation. This information will be provided by the SESA to the employer in writing in a timely manner. Where the prevailing wage is not immediately available, the SESA will conduct a prevailing wage survey using the methods outlined at 20 CFR 656.40. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E. Any challenge shall not require the SESA to divulge any employer wage data which was collected under the promise of confidentiality.

If the employer is unable to wait for the SESA to produce the requested prevailing wage determination for the occupation in question, the employer may rely on other legitimate sources of available wage information. If the employer later discovers, upon receipt of the prevailing wage determination from the SESA, that the information relied upon produced a wage that was below the prevailing wage for the occupation for the area of intended employment and the employer was paying below the SESA-determined wage, no wage violation will be found if the employer retroactively compensates the H–1B alien(s) for the difference between the wage paid and the prevailing wage, within 30 days of the employer's receipt of the SESA determination. In all situations where the employer obtains the prevailing wage determination from the SESA, the Department will accept that prevailing wage determination as correct and will not question its validity where the employer has maintained a copy of the SESA prevailing wage determination. A complaint alleging the inaccuracy of a SESA prevailing wage determination, in these cases, will not be investigated.

(*2*) *An independent authoritative source.* See paragraph (e)(2)(iii)(C)(*2*) of this section. The employer may use an independent authoritative wage source in lieu of a SESA prevailing wage determination. The independent authoritative source survey must meet all the criteria set forth in paragraph (e)(2)(iii)(C)(*2*) of this section.

(*3*) *Another legitimate source of wage information.* See paragraph (e)(2)(iii)(C)(*3*) of this section. The employer may rely on other legitimate sources of wage data to obtain the prevailing wage. The employer will be required to demonstrate the legitimacy of the wage in the event a complaint is filed.

(D) For purposes of this paragraph (e), "similarly employed" means "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" means:

(*1*) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(*2*) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(E) A prevailing wage determination for labor condition application purposes made pursuant to this paragraph (e) shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

(F) Where a range of wages is paid by the employer to individuals in an occupational classification or among individuals with similar experience and qualifications for the specific employment in question, a range is considered to meet the prevailing wage requirement so long as the bottom of the wage range is at least the prevailing wage rate.

(iii) Once the prevailing wage rate is established, the H–1B employer then shall compare this wage with the actual wage rate for the specific employment in question at the place of employment and must pay the H–1B nonimmigrant at least the higher of the two wages.

(iv) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application is certified, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(iii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(2) *Documentation of the wage statement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the wage statement required in paragraph (e)(1) of this section and attested to on Form ETA 9035. The employer shall also document that the wage rate(s) paid to H–1B alien(s) is/are no less than the required wage rate(s). The documentation shall include information about the employer's wage rate to all other individuals with experience and qualifications similar to the H–1B nonimmigrant for the specific employment in question at the place of employment, beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § ____.760 of this part. The payroll records for each such employee shall include:

(A) Employee's full name;

(B) Employee's home address;

(C) Employee's occupation;

(D) Employee's rate of pay;

(E) Hours worked each day and each week by the employee if paid on other than a salary basis, or the prevailing or actual wage is expressed as an hourly wage;

(F) Total additions to or deductions from pay each pay period by employee; and

(G) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

(ii) *Actual Wage.* In addition to payroll data required by paragraph (e)(2)(i) of this section (and also by the FLSA), the employer shall retain documentation regarding the basis it used to establish the actual wage. The employer must show how the wage set for the H–1B nonimmigrant relates to the wages paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question at the place of employment.

(iii) *Prevailing Wage.* The employer also shall retain documentation regarding the determination of the prevailing wage. This source documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the length of time required in § ____.760(c) of this part. The documentation shall be made available to DOL upon request. Such documentation shall consist of the documentation described in paragraph (e)(2)(iii) (A), (B), or (C) of this section and the documentation described in paragraph (e)(2)(iii)(D) of this section. Documentation shall also be made available for public examination to the extent required by ____.760(a) of this part.

(A) If the employer used a wage determination in the area under the provisions of the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see 29 CFR part 4), the documentation shall include an excerpt from the statutory or regulatory determination showing the wage rate for the occupation in the area of intended employment.

(B) If the employer used an applicable wage rate from a union contract which was negotiated at arms-length between a union and the employer, the documentation shall include an excerpt from the union contract showing the wage rate(s) for the occupation(s).

(C) If the employer did not use a wage covered by the provisions of paragraph (e)(2)(iii) (A) or (B) of this section, the employer's documentation shall consist of:

(*1*) A copy of the prevailing wage finding from the SESA for the occupation within the area of employment; or

(*2*) A copy of the prevailing wage survey for the occupation in the area of intended employment published by an independent authoritative source. For purposes of this paragraph (e)(2)(iii)(C)(*2*), a prevailing wage survey for the occupation in the area of intended employment published by an independent source shall mean a survey of wages published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's application and each succeeding 24-month prevailing wage update. Such survey shall:

(*i*) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Be based upon recently collected data—*e.g.*, within the 24-month period immediately preceding the date of publication of the survey; and

(*iii*) Represent the latest published prevailing wage finding by the independent authoritative source for the occupation in the area of intended employment.

(*3*) A copy of the prevailing wage survey or other source data acquired from a legitimate source of wage information that was used to make the prevailing wage determination. For purposes of paragraph (e)(2)(iii)(C)(*3*) of this section, a prevailing wage provided by another legitimate source of such wage information shall be one which:

(*i*) Reflects the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Is based on the most recent and accurate information available; and

(*iii*) Is reasonable and consistent with recognized standards and principles to produce a prevailing wage.

(iv) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was certified, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(iii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(3) *Complaints.* In the event that a complaint is filed pursuant to subpart I of this part, alleging a failure to meet the "prevailing wage" condition or a material misrepresentation by the employer regarding the payment of the required wage, the Administrator shall determine whether the employer has the documentation required in paragraph (e)(2)(iii) of this section, and whether the documentation supports the employer's wage attestation. Where the documentation is either nonexistent or is insufficient to determine the prevailing wage (*e.g.*, does not meet the criteria specified in this section, in which case the Administrator may find a violation of paragraph (e)(2) (i), (ii), (iii), or (iv) of this section); where, based on significant evidence regarding wages paid for the occupation in the area of intended employment, the Administrator has reason to believe that the prevailing wage finding obtained from the independent authoritative source varies substantially from the wage prevailing for the occupation in the area of intended employment; or where the employer has been unable to demonstrate the legitimacy of the prevailing wage determined by another legitimate source, the Administrator may contact ETA, which shall provide the Administrator with a prevailing wage determination, which the Administrator shall use as the basis for the determination as to violations and for the computation of back wages, if such wages are found to be owed. For purposes of this paragraph (e)(3), ETA may consult with the appropriate SESA to ascertain the prevailing wage applicable under the circumstances of the particular complaint.

(f) *The second labor condition statement: working conditions.* An employer seeking to employ H–1B aliens in specialty occupations or as fashion models of distinguished merit and ability shall state on Form ETA 9035 that the employment of H–1B aliens will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

(1) For purposes of this paragraph (f), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification at the worksite and in the area of intended employment." If no such workers are employed at the worksite or by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(i) Having jobs requiring a substantially similar level of skills at the worksite or within the area of intended employment; or

(ii) If there are no substantially comparable jobs at the worksite or in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(2) *Establishing the working conditions requirement.* The second labor condition statement is satisfied when the employer signs the labor condition application attesting that for the period of intended employment its employment of H–1B nonimmigrants will not adversely affect the working conditions of workers similarly employed. Working conditions commonly refer to matters including hours, shifts, vacation periods, and fringe benefits. The employer's obligation regarding working conditions shall continue for the period of employment stated on the labor condition application.

(3) *Documentation of the working condition statement.*

(i) In the event a complaint is filed pursuant to subpart I of this part, the employer shall document the validity of the prevailing working conditions statement referenced in paragraph (f)(1)

of this section and attested to on Form ETA 9035. The employer must be able to show that the working conditions of similarly employed workers were not adversely affected by the employment of an H-1B nonimmigrant—*e.g.*, that the working conditions are similar to working conditions which preceded the employment of the H-1B nonimmigrant, or, if there are no similarly employed workers working for the employer, are similar to those existing in like business establishments to the employer's, in the area of intended employment.

(ii) In the event that an investigation is conducted pursuant to subpart I of this part, concerning whether the employer failed to satisfy the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035, the Administrator shall determine whether the employer has produced the documentation required in §____.730(f)(3)(i) of this part, and whether the documentation is sufficient to support the employer's prevailing working conditions statement. If the employer fails to produce any documentation to prove that there is no adverse effect on the working conditions of workers similarly employed, the Administrator shall find a violation of paragraph (f)(3)(i) of this section. Examples of documentation which employers should either maintain or produce include any relevant information which discusses the working conditions for the industry, occupation and locale, such as published studies, surveys, or articles and documentation regarding working conditions at the worksite, such as fringe benefit packages, which pre-existed the employment of the H-1B nonimmigrant. If the documentation is insufficient to determine whether the employment of H-1B aliens has or has not adversely affected the working conditions of workers similarly employed in the area of intended employment, the Administrator may contact ETA which shall provide the Administrator with advice regarding the working conditions of similarly employed workers in the area of intended employment.

(g) *The third labor condition statement: no strike or lockout.* An employer seeking to employ H-1B nonimmigrants shall state on Form ETA 9035 that there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(17).

(1) *Establishing the no strike or lockout requirement.* The third labor condition statement is satisfied when the employer signs the labor condition application attesting that, as of the date the application is filed, it is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment. Labor disputes for the purpose of this paragraph (g) relate only to those disputes involving employees of the employer working at the place of employment in the occupational classification named in the labor condition application. See also INS regulations at 8 CFR 214.2(h)(17) for effects of strikes or lockouts in general of the H-1B alien's employment.

(2) *Documentation of the third labor condition statement.* (i) The employer need not develop nor maintain documentation to substantiate the statement referenced in paragraph (g)(1) of this section. In the case of an investigation, however, the employer has the burden of proof to show that there was no strike or lockout in the course of a labor dispute for the occupational classification in which an H-1B alien is employed at the time the application was filed.

(h) *The fourth labor condition statement: notice.* An employer seeking to employ H-1B nonimmigrants shall state on Form ETA 9035 that the employer has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in which the H-1B nonimmigrants will be employed or are intended to be employed in the area of intended employment for which the aliens are sought, or, if there is no such bargaining representative, has posted notice of filing in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in this paragraph (h).

(1) *Establishing the notice requirement.* The fourth labor condition statement is established when one of the following has occurred:

(i) Where there is a collective bargaining representative in the occupational classification in which the H-1B nonimmigrants will be employed, no later than on or before the date the labor condition application is filed with ETA, the employer of H-1B nonimmigrants shall provide notice to the bargaining representative that a labor condition application has been filed with ETA. The notice shall identify the number of H-1B nonimmigrants the employer is seeking to employ; the occupational classification(s) in which the H-1B nonimmigrants will be employed; the wages offered; the period of employment; and the location(s) at which the H-1B nonimmigrants will be employed. Notice under this paragraph (h)(1)(i) shall include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(ii) Where there is no collective bargaining representative, the employer shall, no later than on or before the date the labor condition application is filed with ETA, provide a notice of the labor condition application to its employees by posting a notice in at least two conspicuous locations at the place of employment. The notice shall indicate the H-1B nonimmigrants are sought; the number of such nonimmigrants the employer is seeking; the occupational classification(s); the wages offered; the period of employment; the location(s) at which the H-1B nonimmigrants will be employed in the occupation(s); and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." The posting of exact copies of the labor condition application, together with the statement regarding the filing of complaints, shall be sufficient to meet the requirements of paragraph (h)(1)(ii) of this section.

(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted before the labor condition application is filed and shall remain posted for a total of 10 days.

(2) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (h)(1) of this section and attested to on Form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(3) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760(a) of this part, and shall be made available to DOL upon request.

§ ____.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to certify the labor condition application or return it to the employer not certified.

(1) *Certification of labor condition application.* Where all items on Form ETA 9035 have been completed, the form is not obviously inaccurate, and it contains the signature of the employer or its authorized agent or representative, the regional Certifying Office shall certify the labor condition application unless it falls within one of the categories set forth in paragraph (a)(2) of this section. The Certifying Officer shall make a determination to certify or not certify the labor condition application within 7 working days of the date the application is received and date-stamped by the Department. If the labor condition application is certified, the regional Certifying Officer shall return a certified copy of the labor condition application to the employer or the employer's authorized agent or representative. The employer shall file the certified labor condition application with the appropriate INS office in the manner prescribed by INS. The INS shall determine whether each occupational classification named in the certified labor condition application is a specialty occupation or as a fashion model of distinguished merit and ability.

(2) *Determinations not to certify labor condition applications.* ETA shall not certify a labor condition application and shall return such application to the employer or the employer's authorized agent or representative, when either or both of the following two conditions exists:

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to identify the occupational classification(s) or state the number of nonimmigrants sought, the wage rate, period of intended employment or date of need; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

(ii) When the Form ETA 9035 contains obvious inaccuracies. An obvious inaccuracy will be found if the employer files an application in error—*i.e.,* where the Administrator, Wage and Hour Division, after notice and opportunity for a hearing pursuant to subpart I of this part, has notified ETA in writing that the employer has been disqualified from employing H–1B nonimmigrants under section 212(n)(2) of the INA. Examples of other obvious inaccuracies include stating a wage rate of $1.00 per hour (which would be below the FLSA minimum wage), or identifying the occupation as "ditch digger," (which would not be a "specialty occupation" under the INA definition).

(3) *Correction and resubmission of labor condition application.* If the labor condition application is not certified pursuant to paragraph (a)(2) (i) or (ii) of this section, ETA shall return it to the employer, or the employer's authorized agent or representative, explaining the reasons for such return without certification. The employer may immediately submit a corrected application to ETA. A "resubmitted" or "corrected" labor condition application shall be treated as a new application by the regional office (*i.e.,* on a "first come, first served" basis) except that if the labor condition application is not certified pursuant to paragraph (a)(2)(ii) of this section because of notification by the Administrator of the employer's disqualification, such action shall be the final decision of the Secretary and no application shall be resubmitted by the employer.

(b) *Challenges to labor condition applications.* ETA shall not consider information contesting a labor condition application received by ETA prior to the determination on the application. Such information shall not be made part of ETA's administrative record on the application, but shall be referred to ESA to be processed as a complaint pursuant to subpart I of this part, and, if such application is certified by ETA, the complaint will be handled by ESA under subpart I of this part.

(c) *Truthfulness and adequacy of information.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application. The burden of proof is on the employer to establish the truthfulness of the information contained on the labor condition application.

§ ____.750 Validity period of the labor condition application.

(a) *Validity of certified labor condition applications.* A labor condition application which has been certified pursuant to the provisions of § ____.740 of this part shall be valid for the period of employment indicated on Form ETA 9035; however, in no event shall the validity period of a labor condition application exceed six years. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or six years, whichever comes first.

(b) *Withdrawal of certified labor condition applications.* (1) An employer who has filed a labor condition application which has been certified pursuant to § ____.740 of this part may withdraw such labor condition application at any time before the expiration of the validity period of the application, provided that:

(i) H–1B nonimmigrants are not employed at the place of employment pursuant to the labor condition application; and

(ii) The Administrator has not found reasonable cause under subpart I to commence an investigation of the particular application. Any such request for withdrawal shall be null and void; and the employer shall remain bound by the labor condition application until the enforcement proceeding is completed, at which time the application may be withdrawn.

(2) Requests for withdrawals shall be in writing and shall be directed to the regional ETA Certifying Officer.

(3) Upon receipt of an employer's written request to withdraw a labor condition application, ETA shall promptly notify the Attorney General that the application has been withdrawn, unless ESA has found reasonable cause to commence an investigation.

(4) An employer shall comply with the "required wage rate" and "prevailing working conditions" statements of its labor condition application required under § ____.730 (e) and (f) of this part, respectively, even if such application is withdrawn, as long as H–1B aliens are employed pursuant to the application, unless the application is superseded by a subsequent application which is certified by ETA.

(5) An employer's obligation to comply with the "no strike or lockout" and "notice" statements of its labor condition application (required under § ____.730 (g) and (h) of this part, respectively), shall remain in effect and the employer shall remain subject to investigation and sanctions for misrepresentation on these statements even if such application is withdrawn, regardless of whether H–1B aliens are actually employed, unless the application is superseded by a subsequent application which is certified by ETA.

(c) *Invalidation or suspension of a labor condition application.* (1) Invalidation of a labor condition application shall result from enforcement action(s) by the Administrator, Wage and Hour Division, under subpart I of this part—*i.e.*, final determinations finding the employer's failure to meet the application's condition regarding strike or lockout; or the employer's willful failure to meet the wage and working conditions provisions of the application; or the employer's substantial failure to meet the notice and public access conditions of the application; see §§ ____.730(h) and 760 of this part; or the misrepresentation of a material fact in an application. Upon notice by the Administrator of the employer's disqualification, ETA shall invalidate the application and notify the Attorney General and the employer, or the employer's authorized agent or representative. ETA shall notify the Attorney General and the employer in writing of the reason(s) that the application is invalidated. When a labor condition application is invalidated such action shall be the final decision of the Secretary.

(2) Suspension of a labor condition application may result from a discovery by ETA that it made an error in certifying the application because such application is incomplete, contains one or more obvious inaccuracies, or has not been signed. In such event, ETA shall immediately notify INS and the employer. When an application is suspended, the employer may immediately submit to the certifying officer a corrected or completed application. If ETA does not receive the corrected application within 30 days of the suspension, or if the employer was previously disqualified by the Administrator and its application was certified in error, the application shall be immediately invalidated as described in paragraph (c) of this section.

(d) *Employers subject to disqualification.* No labor condition application shall be certified for an employer which has been found to be disqualified from participation in the H–1B program as determined in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart I of this part.

§ ____.760 Public access; retention of records.

(a) *Public examination.* The employer shall make a filed labor condition application and necessary supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with DOL. The following documentation shall be necessary:

(1) A copy of the completed labor condition application, Form ETA 9035. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer;

(2) Documentation which provides the wage rate to be paid the H–1B nonimmigrant;

(3) A full, clear explanation of the system that the employer used to set the "actual wage" the employer has paid or will pay for the occupation(s) for which the H–1B nonimmigrant is sought—e.g., memorandum to the file summarizing the system or a copy of the employer's pay system (payroll records are not required, although they shall be made available to the Department in an enforcement action);

(4) A copy of the documentation the employer used to establish the "prevailing wage" for the occupation(s) for which the H–1B nonimmigrant is sought (a general description of the source and methodology is all that is required to be made available for public examination; the underlying individual wage data relied upon to determine the prevailing wage is not a public record, although it shall be made available to the Department in an enforcement action); and

(5) A copy of the document(s) with which the employer has satisfied the union/employee notification requirement of § ____.730(h) of this part.

(b) *National list of applications.* ETA shall compile and maintain on a current basis a list of the labor condition applications. Such list shall be by employer, showing the occupational classification, wage rate(s), number of aliens sought, period(s) of intended employment, and date(s) of need for each employer's application. The list shall be available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N–4456, Washington, DC 20210.

(c) *Retention of records.* The employer shall retain copies of the labor condition application, required wage information, and documentation showing provision of notice to bargaining representatives or employees at the place of employment for a period of one year beyond the end of the period of employment specified on the labor condition application or one year from the date the labor condition application was withdrawn, except that if a timely complaint is filed, the documentation shall be retained until the complaint is resolved through the procedures set forth in subpart I of this part. Required payroll records for the H–1B employees and other employees in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if a timely complaint is filed, all payroll records shall be retained until the complaint is resolved through the procedures set forth in subpart I of this part.

Subpart I—Enforcement of H–1B Labor Condition Applications

§ ____.800 Enforcement authority of Administrator, Wage and Hour Division.

(a) *Authority of Administrator.* The Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and subparts H and I of this part.

(b) *Conduct of Investigations.* The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Availability of Records.* An employer being investigated shall make available to the Administrator such

records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA (8 U.S.C. 1182(n)) or and subpart H or I of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or subpart H or I of this part. Any such interference shall be a violation of the labor condition application and these regulations, and the Administrator may take such further actions as the Administrator consider appropriate.

Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.

(d) *Employer Cooperation.* An employer subject to subpart H or I of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 212(n) of the INA (8 U.S.C. 1182(n)) subpart H or I of this part.

(4) Consulted with an employee of a legal assistance program or any attorney on matters related to section 212(n) of the INA (8 U.S.C. 1182(n)) or to subpart H or I of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(n).

In the event of such intimidation or restraint as are described in this paragraph (d), the conduct shall be a violation of the labor condition application and subparts H and I of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

§ ____.805 Complaints and investigative procedures.

(a) The Administrator, through an investigation pursuant to a complaint, shall determine whether an H-1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact.

Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.

(2) Failed to meet a condition in the labor condition application—

(i) Failed to pay wages as required under § ____.730(e) of this part, for purposes of the assessment of back wages (pursuant to § ____.810(a) of this part); or willfully failed to pay such wages, for purposes of the assessment of civil money penalties (pursuant to § ____.810(b) of this part) and notification to the Attorney General for debarment from the employment of aliens (pursuant to § ____.815 of this part);

(ii) Willfully failed to provide the working conditions required under § ____.730(f) of this part;

(3) Filed a labor condition application for H-1B nonimmigrants during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § ____.730(g) of this part); or

(4) Substantially failed to provide notice of the filing of the labor condition application as required in § ____.730(h) of this part;

(5) Substantially failed to make available for public examination the application and necessary document(s) at the employer's principal place of business or worksite as required in § ____.760(a);

(6) Failed to retain documentation as required by § ____.760(c) of this part; or

(7) Failed otherwise to comply in any other manner with the provisions of subpart H or I of this part.

(b) Pursuant to §§ ____.740(a)(1) and ____.750 of this part, the provisions of this part become effective upon the date of ETA's notification that the employer's labor condition application is certified, whether or not the employer hires any H-1B nonimmigrants in the occupation(s) for the period of employment covered in the labor condition application. Should the period of employment specified in the labor condition application expire or should the employer withdraw the application in accordance with § ____.750(b) of this part, the provisions of this part will no longer be in effect with respect to such application, except as provided in § ____.750(b)(4) of this part.

(c) Any aggrieved person or organization (including bargaining representatives) may file a complaint of a violation described in paragraph (a) of this section.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine whether an investigation is warranted, in that there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. No hearing pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

(3) If the Administrator determines that an investigation on the complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing.

(4) In the event that the Administrator seeks a prevailing wage determination from ETA pursuant to § ____.730(e)(3) of this part, or advice as to prevailing working conditions from ETA pursuant to § ____.730(f)(3)(ii) of this part, the 30-day investigation period shall be suspended, from the date of the Administrator's request to the date of the Administrator's receipt of the wage determination or advice as to prevailing working conditions.

(5) The complaint must be filed not later than 12 months after the date of the alleged violation(s).

(6) The complaint may be submitted to any local Wage and Hour Division office. The addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(d) When an investigation has been conducted, the Administrator shall, pursuant to § ____.815 of this part, issue a written determination as to whether or not any violation(s) as described in paragraph (a) of this section has been committed.

§ ____.810 Remedies.

(a) Upon determining that the employer has failed to pay wages as required by § ____.730(e) of this part, the Administrator shall assess and oversee the payment of back wages to any H–1B nonimmigrant employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such nonimmigrant(s);

(b) Upon determining that the employer has willfully failed to pay the wages required by § ____.730(e) of this part or willfully failed to meet the working conditions required by § ____.730(f) of this part, the Administrator may assess a civil money penalty (pursuant to paragraph (c) of this section) and shall notify the Attorney General for the debarment of the employer from the employment of aliens (pursuant to § ____.815 of this part.) For purposes of this part, "willful failure" means a knowing failure or a reckless disregard for the matter of whether the conduct was contrary to section 212(n)(1)(A) (i) or (ii) of the INA, or § ____.730 (e) or (f) of this part. *Brock* v. *Richland Shoe Co.*, 486 U.S. 128 (1988); see also *Trans World Airlines* v. *Thurston*, 469 U.S. 111 (1985).

(c) Upon determining that the employer has committed any violation(s) described in § ____.805(a) of this part, the Administrator may assess a civil money penalty not to exceed $1,000 per violation. In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the INA and subpart H or I of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(d) In addition to back wages and civil money penalties, the Administrator may impose such other administrative remedy(ies) under this subpart as the Administrator deems appropriate.

(e) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the back wages and/or civil money penalties by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

§ ____.815 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.805 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator shall file with the Chief Administrator Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § ____.805 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an employer, prescribe any remedies, including the amount of any back wages assessed, the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies assessed.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.820 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of labor (upon whom copies of the request must be served).

(5) Inform the parties that, pursuant to § ____.855 of the this part, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the employer.

§ ____.820 Request for hearing.

(a) Any interested party desiring to request an administrative hearing in accordance with section 556 of title 5, United States Code, on a determination issued pursuant to §§ ____.805 and ____.815 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s). In such a proceeding, the party requesting the hearing shall be the prosecuting party and the employer shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the employer shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ ____.825 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.830 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N-2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally observed holiday, in which case the time period includes the next business day.

§ ____.835 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the INA, no requests for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.830 of this part.

§ ____.840 Decision and order of administrative law judge.

(a) Within 60 calendar days after the date of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § ____.730(e)(3) of this part), the administrative law judge shall not determine the prevailing wage de novo, but shall, based on the evidence (including the ETA administrative record), either accept the wage determination or vacate the wage determination. If the wage determination is vacated, the administrative law judge shall remand the case to the Administrator, who may then refer the matter to ETA and, upon the issuance of a new wage determination by ETA, resubmit the case to the administrative law judge. Under no circumstances shall source data obtained in confidence by ETA, or the names of establishments contacted by ETA, be submitted into evidence or otherwise disclosed.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.845 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review

permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify·

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*i.e.*, briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.830(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.850 of this part.

§ ____.850 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts H and I of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.855 Notice to the Employment and Training Administration and the Attorney General.

(a) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an employer upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § ____.820 of this part; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer; or

(3) Where the administrative law judge finds that there was no violation by an employer, and the Secretary, upon review, issues a decision pursuant to § ____.845 of this part, holding that a violation was committed by an employer

(b) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (a), shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the INA (8 U.S.C. 1154 and 1184(c)) during a period of at least one year for aliens to be employed by the employer.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall suspend the employer's labor condition application(s) under subparts H and I of this part, and shall not accept for filing any application or attestation submitted by the employer under 20 CFR Part 656 or subparts A, B, C, D, E, H or I of this part, for a period of 12 months or for a longer period if such is specified by the Attorney General for visa petitions filed by that employer under sections 204 and 214(c) of the INA.

Adoption of the Joint Rule

The agency-specific adoption of the joint rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYERS' BENEFITS

Accordingly, Part 655 of chapter V of title 20, Code of Federal Regulations. is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1 The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*, sec. 3(c)(1), Public Law 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Public Law 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*, and sec. 3(c)(1), Public Law 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*, and sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*, and sec. 221(a), Public Law 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 655.0 [Amended]

2. Section 655.0 is amended by removing from paragraph (d) the phrase "specialty occupations," and by adding in lieu thereof the phrase "specialty occupations or as fashion models of distinguished merit and ability,".

Subparts H and I—[Amended]

3. Part 655 is amended by revising subparts H and I to read as set forth at the end of the common preamble.

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

Sec.

Signed at Washington, DC, this 7th day of January 1992.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

TITLE 29—LABOR.

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations is amended by revising subparts H and I of part 507 to read as set forth at the end of the common preamble.

PART 507—ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS

Subparts A, B, C, D, E, F, and G—[Reserved]

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.;* and Pub. L. 102-232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

Signed at Washington, DC, this 7th day of January, 1992.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Appendix 1 (Not to Be Codified in the CFR): Form ETA 9035. Printed below is a copy of Form ETA 9035.

BILLING CODE 4510-30-M; 4510-27-M

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No.: 1205-0310
Expiration Date: 10/31/92

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Telephone No. ( )

4. FAX No. ( )

5. Employer's Address (No., Street, City, State, and ZIP Code)

6. Address Where Documentation is Kept (if different than item 5)

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three -Digit Occupational Groups Code	(b) Job Title (Check box if position is part-time)	(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
	☐					
	☐					
	☐					
	☐					

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check **each** box to indicate that the employer will comply with **each** statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B nonimmigrants will be employed: (check appropriate box)

☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B nonimmigrants will be employed; or

☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in a conspicuous place where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official

Signature

Date

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official

ETA Case No.

Subsequent DOL Action: Suspended _____ (date) Invalidated _____ (date) Withdrawn _____ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9035 (Jan. 1992)

INSTRUCTIONS FOR COMPLETING FORM ETA 9035
LABOR CONDITION APPLICATION FOR
H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, Subparts H and I, and to 29 CFR 507, Subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA Regional Office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the INS.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Telephone. Self-explanatory.

Item 4. FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. (If different than item 5). Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three Digit Occupational Groups Code. Enter the three-digit code which most closely describes the job(s) to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name(s) or payroll title(s) of the job(s) being offered. Check box to the right of the blank if position is part-time.

Item 7(c). Number of Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(f). Location(s) Where H-1B Nonimmigrants Will Work. Enter the city and state of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's place of business or worksite and made available to DOL upon such official's request. See **20 CFR 655.730** for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the occupational classification.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupations at the worksite.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupations. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in a conspicuous place where H-1B nonimmigrants will be employed.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative or employees, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

BILLING CODE 4510-30-C; 4510-27-C

Appendix 2 (Not to be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models. Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models.

BILLING CODE 4510-30-M; 4510-27-M

THREE-DIGIT OCCUPATIONAL GROUPS

PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001 ARCHITECTURAL OCCUPATIONS
002 AERONAUTICAL ENGINEERING OCCUPATIONS
003 ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005 CIVIL ENGINEERING OCCUPATIONS
006 CERAMIC ENGINEERING OCCUPATIONS
007 MECHANICAL ENGINEERING OCCUPATIONS
008 CHEMICAL ENGINEERING OCCUPATIONS
010 MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011 METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012 INDUSTRIAL ENGINEERING OCCUPATIONS
013 AGRICULTURAL ENGINEERING OCCUPATIONS
014 MARINE ENGINEERING OCCUPATIONS
015 NUCLEAR ENGINEERING OCCUPATIONS
019 OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020 OCCUPATIONS IN MATHEMATICS
021 OCCUPATIONS IN ASTRONOMY
022 OCCUPATIONS IN CHEMISTRY
023 OCCUPATIONS IN PHYSICS
024 OCCUPATIONS IN GEOLOGY
025 OCCUPATIONS IN METEOROLOGY
029 OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030 OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031 OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032 OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033 OCCUPATIONS IN COMPUTER SYSTEMS TECHNICAL SUPPORT
039 OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040 OCCUPATIONS IN AGRICULTURAL SCIENCES
041 OCCUPATIONS IN BIOLOGICAL SCIENCES
045 OCCUPATIONS IN PSYCHOLOGY
049 OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050 OCCUPATIONS IN ECONOMICS
051 OCCUPATIONS IN POLITICAL SCIENCE
052 OCCUPATIONS IN SOCIOLOGY
055 OCCUPATIONS IN ANTHROPOLOGY
059 OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070 PHYSICIANS AND SURGEONS
071 OSTEOPATHS
072 DENTISTS
073 VETERINARIANS
074 PHARMACISTS
076 THERAPISTS
077 DIETITIANS
078 OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079 OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090 OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091 OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092 OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094 OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096 HOME ECONOMISTS AND FARM ADVISERS
097 OCCUPATIONS IN VOCATIONAL EDUCATION
099 OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100 LIBRARIANS
101 ARCHIVISTS
102 MUSEUM CURATORS AND RELATED OCCUPATIONS
109 OTHER OCCUPATIONS IN MUSEUM, LIBRARY AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110 LAWYERS
111 JUDGES
119 OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120 CLERGY
129 OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131 WRITERS
132 EDITORS, PUBLICATION, BROADCAST, AND SCRIPT
139 OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

142 ENVIRONMENTAL, PRODUCT AND RELATED DESIGNERS
149 OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152 OCCUPATIONS IN MUSIC
159 OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS

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federal register

Monday
January 13, 1992

Part III

Department of the Interior

Office of the Secretary

43 CFR Part 37
Cave Management; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 37

[WO-340-4333-02-24 1A]

RIN 1004-AB59

Cave Management

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Federal Cave Resources Protection Act of 1988, which requires identification, protection, and maintenance, to the extent practical, of significant caves on Department of the Interior administered lands. The proposed rule would establish criteria to be considered in the identification of significant caves. It would also integrate cave management into existing planning and management processes and protect cave resource information to prevent vandalism and disturbance of significant caves.

DATES: Comments must be received in writing by April 13, 1992. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Delmar Price, Division of Recreation, Cultural, and Wilderness Resources, (202) 208-3353.

SUPPLEMENTARY INFORMATION: The Federal Cave Resources Protection Act of 1988 (the Act) (16 U.S.C. 4301-4309, 102 Stat. 4546), became law on November 18, 1988. The purpose of the Act is to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all, and to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, or recreational purposes.

The Act states that it is the policy of the United States that Federal lands be managed in a manner that protects and maintains, to the extent practical, significant caves. The Act also requires the Secretary of the Interior to issue such regulations as he deems necessary to achieve the purposes of the Act on Department of the Interior-administered Federal lands. The regulations are required to include, but need not be limited to, criteria for the identification of significant caves.

This proposed rulemaking would establish criteria to be considered in the identification of significant caves located on Federal lands administered by the Department of the Interior and procedures for carrying out other provisions of the Act relating to protecting significant caves and fostering cooperation and exchange of information between governmental authorities and those who utilize caves.

An advance notice of proposed rulemaking was published in the **Federal Register** on March 3, 1989 (54 FR 9066), inviting comments on what should be included in a proposed rule, and particularly requesting suggestions as to criteria for determining what constitutes a significant cave. A total of 9 comments were received in response to that notice: 4 from agencies of State government, 2 from business entities, 2 from individuals, and 1 from a Federal agency.

Respondents recommended that particular resource values be considered in determining the significance of caves. These included the presence and type of water; archaeological, cultural, and historic resources; biological resources, including bat guano; recreational values; and the amount and degree of past use or evidence of vandalism. Other comments urged that the concept of "significance" be carefully circumscribed, that care should be taken to make sure that not all caves are labeled significant, that surface uses and particularly mineral exploration and development not be unduly restricted by cave regulations, and that access to significant caves not be limited to just special interest groups. Some respondents addressed the need for sufficient funding to maintain caves that are used for recreation, others suggested the establishment of a permit system for regulating access to significant caves, while others urged that access not be regulated at all.

All these comments were carefully considered during the preparation of this proposed rule, except those that addressed matters beyond its scope, such as funding, permit systems, and the effect of significant caves on other land uses.

During consideration of rules that might be needed to implement the Federal Cave Resources Protection Act, the Department of the Interior has carefully examined the provisions of the Act in the context of existing agency and Departmental regulations. None of the agencies has regulations governing the identification of significant caves and confidentiality of information concerning the nature and location of significant caves. On the other hand, some of the agencies have regulations that cover other regulatory aspects of the Act. In the interest of minimizing duplication of regulations, the decision was made to develop one Departmentwide regulation to deal with provisions in the Act not covered by existing regulations. Each agency with responsibility for cave management in the Department of the Interior may amend its existing regulations or separately develop new regulations to address other regulatory provisions in the Act, such as permits, occupancy, use, prohibited acts, and civil and criminal penalties.

Prior to enactment of the Act, the Department of the Interior managed caves in accordance with the general authorities that established the agencies, as well as the Antiquities Act of 1906 (16 U.S.C. 431, *et seq.*); the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa); the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251, *et seq.*); and the Endangered Species Act of 1973 (16 U.S.C. 1531).

The Department of the Interior cave management policy, except for those caves under the authority of the National Park Service, focuses on managing caves as nonrenewable resources to maintain their values; balancing surface resource management and cave use with protection of cave values; and incorporating cave management activities, considerations, and management prescriptions into the agency resource management plans. The Department and agency policies are generally consistent with the Federal Cave Resources Protection Act and will be revised and strengthened in accordance with the Act.

The policy of the National Park Service, pursuant to its Organic Act of 1916 (16 U.S.C. 1, *et seq.*) and its Management Policies (chapter 4:20, December 1988), is that all caves on lands that it administers are afforded protection and all will be managed in compliance with approved resource management plans. Under the laws and policies identified above, all caves in national park land are considered significant, regardless of any other criteria under the Act.

The Secretary of the Interior will cooperate and consult with the Secretary of Agriculture to devise similar procedures for the listing of

significant caves. The procedures for submitting and evaluating nominations for the initial listing of significant caves will be published in a **Federal Register** notice announcing the call for nominations. Subsequent listings will be done separately by each agency through their resource management planning processes.

This proposed rule was developed cooperatively by representatives of the various Department of the Interior agencies that have cave management responsibilities. The Department also consulted with the Forest Service, Department of Agriculture, which is developing similar regulations, and with representatives of interested cave organizations.

The principal author of this proposed rule is Delmar Price, Division of Recreation, Cultural and Wilderness, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Department of the Interior.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. The proposed rule would merely establish criteria to be considered in the identification of significant caves; it would not itself protect any land from or release land to development.

For the same reasons, the Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 43 CFR Part 37

Cave resources management, Fish and Wildlife Service, Indian Affairs Bureau, Land Management Bureau, National Park Service, Public lands, Reclamation Bureau, Recreation and recreation areas.

Under the authorities stated below, it is proposed to amend Subtitle A of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 37 is added to read as follows:

PART 37—CAVE MANAGEMENT

Subpart A—Cave Management—General

Sec.

Subpart B—Cave Designation

Authority: 16 U.S.C. 4301–4309; 43 U.S.C. 1740.

Subpart A—Cave Management—General

§ 37.1 Purpose.

The purpose of this regulation is to provide the basis for identifying and protecting significant caves on Federal lands administered by the Secretary of the Interior.

§ 37.2 Policy.

It is the policy of the Secretary that Federal lands be managed in a manner which, to the extent practical, protects and maintains significant caves and cave resources.

§ 37.3 Authority.

Section 4 of the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546; 16 U.S.C. 4301) authorizes the Secretary to issue regulations providing for the identification of significant caves. Section 5 authorizes the Secretary to withhold information concerning the nature and location of significant caves under certain circumstances.

§ 37.4 Definitions.

(a) *Authorized officer* means any agency employee delegated the authority to perform the duties described in this part.

(b) *Cave* means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, or any mine, tunnel, aqueduct, or other man-made excavation), and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or man-made. Such term shall include any natural pit, sinkhole, or other feature that is an extension of a cave entrance.

(c) *Cave resources* means any material or substance occurring naturally in caves on Federal lands, such as animal life, plant life, paleontological resources, cultural resources, sediments, minerals, speleogens, and speleothems.

(d) *Caver* means a person who explores, maps, studies, and/or investigates cave areas for recreational reasons or to promote general knowledge of the resources present.

(e) *Federal lands*, as defined in the Federal Cave Resources Protection Act, means lands the fee title to which is owned by the United States and administered by the Secretary of the Interior.

(f) *Secretary* means the Secretary of the Interior.

(g) *Significant cave* means a cave located on Federal lands that has been evaluated by the authorized officer and determined to have biotic, cultural, mineralogic, paleontologic, geologic, hydrologic, or other resources that have

important value for scientific, educational, or recreational purposes.

(h) *Vug* means a small cavity in a vein or in rock, usually lined with crystals.

Subpart B—Cave Designation

§ 37.11 Identification and designation of significant caves.

(a) Nominations for initial and subsequent listings: The authorized officer will give the public the opportunity to nominate potential significant caves. The authorized officer will publish in the **Federal Register** a call for nominations for the initial listing, including procedures for preparing and submitting the nominations. Nominations for subsequent listings will be accepted from the public by the agency that manages the land where the cave is located as new cave discoveries are made or as new information that could influence significance determinations becomes available.

(b) Evaluation for initial and subsequent listings: All known and nominated caves on Federal lands will be evaluated during the initial listing process. The evaluation of the nominations for significant caves will be carried out in consultation with individuals and organizations interested in the management and use of cave resources, and other affected resources, within the limits imposed by the confidentiality provisions of § 37.2 of this part.

(c) Criteria for the Identification of Significant Caves: A significant cave on Federal lands shall possess one or more of the following features, characteristics, or values, which are deemed by the authorized officer to be unusual, significant, or otherwise meriting special management.

(1) Biota: The cave provides habitat for cave-dependent organisms or animals. The cave contains species or subspecies of flora or fauna that are native to caves, occur in large numbers or variety, are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) Cultural: The cave contains historic properties or archaeological resources (as described in 36 CFR 60.4 and 43 CFR 7.3) that are eligible for or listed on the National Register of Historic Places.

(3) Geologic/Mineralogic/Paleontologic: The cave possesses one or more of the following features:

(i) Geologic or mineralogic features that are fragile or outstanding, or that are useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute important scientific information.

(4) Hydrologic: The cave is a part of a hydrologic system or contains water that is important to humans, biota, or development of cave features.

(5) Recreational: The cave provides or could provide recreational opportunities by virtue of challenge or scenic values.

(6) Educational or Scientific: The cave offers opportunities for educational or scientific use; or, the cave is virtually in a pristine state, lacking evidence of human disturbance or impact; or, the length, volume, total depth, pit depth, height, or similar measurements are worthy of note.

(d) Records and Documentation: Appropriate records and maps will be retained by the authorized officer for each significant cave. At a minimum, the documentation shall include a signed certification that the cave has been found to be significant and the information used to make that determination. This information will be protected under the confidentiality requirement of this regulation.

(e) The policy of the National Park Service, pursuant to its Organic Act of 1916 (16 U.S.C. 1 *et seq.*) and Management Policies (chapter 4:20, Dec. 1988) is that all caves are afforded protection and will be managed in compliance with approved resource management plans. Accordingly, all caves on National Park Service-administered lands are deemed to fall within the definition of "significant cave."

(f) Based on the criteria stated in paragraph (c) of this section, the authorized officer will determine whether caves nominated under paragraph (a) of this section are significant.

§ 37.12 Confidentiality of cave information.

(a) No Department of the Interior employee shall disclose information concerning the location of any significant cave or cave that has been nominated as significant as to which final determination is pending, unless an authorized officer has determined, based on information received under paragraph (b) of this section that disclosure would contribute to the protection and responsible use of the cave and cave resources, and will not create a substantial risk of harm, theft, or destruction of cave resources.

(b) A written request to view information about a significant cave by a Federal or State governmental agency, bona fide educational or research institute, or individual or organization assisting with cave management activities, will be considered when the following information is submitted to the authorized officer:

(1) A signed letter specifying the cave information requested.

(2) Name, address, and telephone number of the individual responsible for the security of the information received.

(3) A legal description of the area for which the information is sought.

(4) The purpose for which the information is sought, and

(5) Written assurances and evidence that the requesting party will adequately protect the confidentiality of the information and ensure the protection of the significant cave(s) from vandalism or unauthorized use.

Dated: October 21, 1991.

Richard Roldan,

Assistant Secretary of the Interior.

[FR Doc. 92-775 Filed 1-10-92; 8:45 am]

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federal register

Monday
January 13, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Formula Allocations for the HOME Investment Partnerships Program for FY 1992 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3356; FR-3179-N-01]

Formula Allocations for the HOME Investment Partnerships Program for FY 1992 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of HOME Program formula allocations for FY 1992 and deadlines for submitting Notices of Intent to Participate, Comprehensive Housing Affordability Strategies, and Program Descriptions.

SUMMARY: This notice announces formula allocations of HOME Program funds for metropolitan cities, urban counties, consortia of units of general local government and for States for FY 1992. It also identifies those jurisdictions that may use their HOME formula allocations for new construction without prior HUD approval and specifies the portion of their HOME formula allocations that those jurisdictions must use only for new construction or substantial rehabilitation of rental housing for a period of 24 months. Further, this notice identifies all other areas where HUD has determined that HOME funds may be used for new construction, without prior HUD approval.

Finally, this notice advises jurisdictions of the deadlines for submitting (1) their written notification of intent to participate in the HOME Program, (2) their comprehensive housing affordability strategy (housing strategy) and (3) their program descriptions.

DATES: Notification of intent to participate. Not later than February 12, 1992, a jurisdiction must notify the Community Planning and Development (CPD) Division Director in the appropriate HUD Field Office in writing, of its intention to become a particpating jurisdiction, and, if applicable, must submit evidence that it has met the threshold allocation requirements.

Submission of housing strategy. Not later than 90 days after providing notification of its intention to become a participating jurisdiction, a jurisdiction that has not submitted a housing strategy to HUD or has submitted only an abbreviated housing strategy (as provided for in 24 CFR 91.25) must submit a housing strategy to the CPD Division Director in the appropriate HUD Field Office.

Submission of program description and certifications. Not later than 45 days after its designation as a participating jurisdiction, a participating jurisdiction must submit a program description to the CPD Division Director in the appropriate HUD Field Office.

FOR FURTHER INFORMATION CONTACT: David Cohen, Director, Office of Affordable Housing Programs, room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-7000; telephone (202) 708-2685. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement:

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013.

I. Purpose and Substantive Description

(A) Authority

The HOME Investment Partnerships Program is authorized by the HOME Investment Partnerships Act (Pub. L. 101-625, title II, approved November 28, 1990). The program regulations are codified at 24 CFR part 92. (All references in this notice to 24 CFR part 92 are to the interim rule published at 56 FR 65312 on (December 16, 1991).) Section 92.50 of 24 CFR contains the basic formula for allocating HOME funds and 24 CFR 92.51 contains the formula for determining which jurisdictions may use their HOME funds for new construction and the amount of HOME funds a jurisdiction must use for new construction or substantial rehabilitation of rental housing (the rental housing production set-aside).

Regulations concerning the housing strategy are codified at 24 CFR part 91, which was promulgated as an interim rule, published at 56 FR 4480, on February 4, 1991.

(B) Formula Allocation Amounts

A total of $1.5 billion has been appropriated for the HOME Program for FY 1992. The Department has set aside $15 million (one percent of the total HOME Program appropriation) for grants to Indian tribes and $25 million for technical assistance. These funds will be made available through separate notices in the Federal Register. This notice allocates by formula the remaining $1,460,000,000. Sixty percent or $876,000,000 is being allocated to metropolitan cities, urban counties and consortia of units of local government and 40 percent or $584,000,000 is being allocated to States.

Appendix A to this notice contains the formula allocations for metropolitan cities, urban counties, and consortia that receive allocations of $750,000 or more. Appendix B contains the formula allocations for metropolitan cities, urban counties, and consortia that receive allocations of $500,000 or more, but less than $750,000. Appendix C contains the formula allocations for States.

(C) Rental Production Set-Aside and New Construction List

Rental production set-aside. In accordance with 24 CFR 92.51(e), appendices A, B, and C specify, for certain jurisdictions, the portion of their respective formula allocations that each of these jurisdictions must use, for a period ending 24 months after the allocation amounts are deposited in the jurisdiction's HOME Investment Trust Fund, only to produce affordable rental housing through new construction or substantial rehabilitation (rental housing production set-aside).

New construction list. In accordance with 24 CFR 92.51(a), each jurisdiction receiving a rental production set-aside is also authorized by HUD to use any of its formula allocation for new construction, without having to qualify under either 24 CFR 92.209, New construction: Neighborhood revitalization, or 24 CFR 92.210, New construction: Special needs.

In accordance with 24 CFR 92.51(a), appendix D lists areas, not receiving a formula allocation, in which HOME funds may be used for new construction. Appendix D does not include areas with populations under 25,000.

Requests for review. A unit of general local government that receives a formula allocation under this notice but that is not on the list of jurisdictions in which new construction is authorized may request HUD to reconsider its new construction eligibility. A State may request HUD to consider its eligibility to use HOME funds for new construction with respect to a jurisdiction that does not receive a formula allocation and has a population of 25,000 or more. A State also may request HUD to consider its eligibility to use HOME funds for new construction in an area with a population less than 25,000.

Requests for review must be submitted to the CPD Division Director in the appropriate HUD Field Office and

must comply with the requirements of 24 CFR 92.51(d).

(D) Eligibility

In the HOME Program, funds are allocated by formula to units of general local government that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under 24 CFR 92.101 and to States. The minimum formula allocation for a unit of general local government is $500,000 and is $3,000,000 for a State. To be eligible to receive its formula allocation from HUD, a jurisdiction must be designated by HUD as a participating jurisdiction.

To be designated a participating jurisdiction, a jurisdiction must:

(1) Have an allocation under the formula. A unit of general local government listed in Appendix B of this notice (i.e., its formula allocation is between $500,000 and $750,000), must provide the difference between its formula allocation and $750,000 or the State may provide the shortfall from its allocation or from other sources (24 CFR 92.102);

(2) Submit its notice of intent to participate (24 CFR 92.103); and

(3) Have a HUD-approved housing strategy (24 CFR 92.104).

When a jurisdiction has complied with the requirements of 24 CFR 92.102 through 92.104 and the HUD Field Office has approved the jurisdiction's housing strategy in accordance with 24 CFR 91, the HUD Field Office will designate the jurisdiction as a participating jurisdiction.

II. Program Description Submission Requirements

Under 24 CFR 92.150(a), a participating jurisdiction must submit a program description each fiscal year within 45 days of the date of publication of the formula allocations, and a jurisdiction that has not yet been designated as a participating jurisdiction must submit a program description within 45 days of designation. Thus, in this initial fiscal year for the HOME Program, all program descriptions are due within 45 days of designation as a participating jurisdiction.

III. Checklist of Allocation Threshold Submission Requirements and of Program Description Submission Requirements

(A) Evidence of Meeting Threshold Allocation Requirement

A unit of general local government listed in appendix B (i.e., that has a formula allocation of $500,000 or more, but less than $750,000) must submit, with its notice of intent to participate, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in 24 CFR 92.102(b):

(1) Authorization from the State to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

(B) Content of Program Description

In accordance with 24 CFR 92.150(b), the program description must provide the following information:

(1) An executed Standard Form 424;

(2) For a local jurisdiction, the estimated use of HOME funds (consistent with needs identified in its approved housing strategy) for each of the following categories of eligible activities: new construction, substantial rehabilitation, other rehabilitation, acquisition (not involving new construction or rehabilitation), tenant-based rental assistance and an estimate of whether units assisted will be rental or owner-occupied;

(3) For a State, a description of how the State will distribute funds (consistent with needs identified in its approved housing strategy), i.e., transferring funds to other jurisdictions that do not meet the participation threshold allocation level in 24 CFR 92.102, administering a competitive process, or directly administering HOME funds. To the extent known, States shoud identify the areas in which HOME funds will be used;

(4) The amount of HOME funds that the jurisdiction is reserving for community housing development organizations. An explanation of how the jurisdiction will work with community housing development organizations and a description of the activities (type of activity and level of funds) that community housing development organizations will be undertaking for the jurisdiction;

(5) If the jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale should be described as required in 24 CFR 92.254(a)(4);

(6) If the jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in 24 CFR 92.211;

(7) If a jurisdiction intends to use other forms of investment not described in 24 CFR 92.205(b), a description of the other forms of investment; and

(8) A statement of the policy and procedures to be followed by the jurisdiction to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under 24 CFR 92.350 and 92.351, respectively.

(C) The Following Certification Must Accompany the Program Description

(1) A certification that, before committing funds to a project, the jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(2) If applicable, the certifications required by 24 CFR 92.209 to do new construction to facilitate a neighborhood revitalization program for a jurisdiction that is not identified in appendix A or B as authorized to do new construction;

(3) If applicable, the certifications required, by 24 CFR 92.210 to do new construction on the basis of special needs for a jurisdiction that is not identified in appendix A or B as authorized to do new construction;

(4) If the jurisdiction intends to provide tenant-based assistance, the certification required by 24 CFR 92.211;

(5) A certification that the submission of the program description is authorized under state and local law (as applicable), and the jurisdiction possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(6) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 92.353;

(7) A certification that the jurisdiction and, if applicable, state recipients, will use HOME funds pursuant to the jurisdiction's approved housing strategy and in compliance with all requirements of 24 CFR part 92;

(8) The certification with regard to the drug-free workplace required by 26 CFR part 24, subpart F; and

(9) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

If a jurisdiction needs a copy of the regulations, the Standard Form 424, or

language for any required certification, it may obtain them from the Community Planning and Development Division of any HUD Field Office.

IV. Corrections to Deficient Program Descriptions

If the program description is not consistent with a participating jurisdiction's approved housing strategy or if the participating jurisdiction has failed to submit information sufficient to allow HUD to make the necessary determinations required by 24 CFR 92.150(b)(5), (b)(7) and (b)(8), if applicable, HUD may require the participating jurisdiction to furnish such further information or assurances as HUD considers necessary to find the program description and certifications satisfactory. HUD will notify the participating jurisdiction in writing of any technical deficiencies in the program description. The participating jurisdiction must submit corrections or additional information within 20 calendar days from the date of HUD's letter notifying the participating jurisdiction of any such deficiency.

As stated at 24 CFR 92.151(c), if the participating jurisdiction does not submit the supporting information under 24 CFR 92.150(b)(5) or (b)(7) sufficient to show consistency with its approved housing strategy or to allow the required HUD determinations or HUD disapproves the guidelines under 24 CFR 92.150(b)(5) or the form of investment under 24 CFR 92.150(b)(7), the Field Office may approve the program description conditionally, excepting those activities covered by those sections until such time as the necessary information is submitted.

V. Suspension of Match Requirement for FY 1992 HOME Funds

The HUD Appropriations Act for FY 1992 (Pub. L. 102–139, 105 Stat. 736, approved October 28, 1991) states that the Secretary shall not, as a condition of assisting a participating jurisdiction under the HOME Investment Partnerships Act, using amounts provided for FY 1992 only, require any contributions by or on behalf of a participating jurisdiction, notwithstanding section 220 of the HOME Investment Partnerships Act. Section 220 contains the matching requirements for the HOME Program. Thus, 24 CFR 92.218 through 92.222 of the program regulations, which relate to the matching requirements of the program, do not apply to FY 1992 HOME funds and participating jurisdictions do not have to provide matching contributions for FY 1992 HOME funds, regardless of the fiscal year in which the FY 1992 HOME funds are drawn down (see 56 FR 65312, 65351, fn 1, (December 16, 1991).

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12602, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential significant impact on family, formation, maintenance, and general well-being.

Dated: January 7, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210-29-M

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
AL	BIRMINGHAM	2965	0	CA	SANTA CLARA COUNTY	1386	518
AL	MOBILE	1595	0	CA	SONOMA COUNTY	1253	452
AL	MONTGOMERY	1367	0	CA	VENTURA COUNTY	922	218
AL	JEFFERSON COUNTY	1286	0	CA	ALAMEDA CO. CONSORTIUM	3176	1306
AK	ANCHORAGE	864	0	CA	SAN MATEO CO. CONSORTIUM	3105	1316
AZ	PHOENIX	4465	0	CO	COLORADO SPRINGS	1215	0
AZ	MARICOPA CO. CONSORTIUM	3239	0	CO	DENVER	4198	0
AZ	TUCSON CONSORTIUM	3002	0	CO	ADAMS COUNTY	761	0
AR	LITTLE ROCK	1135	0	CO	PUEBLO CONSORTIUM	812	0
CA	ANAHEIM	1437	483	CT	BRIDGEPORT	2164	647
CA	BAKERSFIELD	810	0	CT	HARTFORD	2499	716
CA	BERKELEY	1416	882	CT	NEW HAVEN	1994	547
CA	COMPTON	1012	466	CT	WATERBURY	1020	0
CA	EL MONTE	955	416	DE	WILMINGTON	819	0
CA	FRESNO	2157	0	DE	NEW CASTLE COUNTY	1228	0
CA	GLENDALE	1408	772	FL	FT LAUDERDALE	1132	0
CA	HUNTINGTON BEACH	881	274	FL	GAINESVILLE	784	0
CA	HUNTINGTON PARK	838	512	FL	HIALEAH	1282	559
CA	INGLEWOOD	1186	635	FL	JACKSONVILLE	3876	0
CA	LONG BEACH	3929	1175	FL	MIAMI	5314	1390
CA	LOS ANGELES	35621	17308	FL	MIAMI BEACH	1846	437
CA	OAKLAND	4282	1387	FL	ORLANDO	1113	0
CA	OXNARD	819	275	FL	ST PETERSBURG	1640	0
CA	PASADENA	1198	507	FL	TALLAHASSEE	829	0
CA	POMONA	779	213	FL	TAMPA	2326	0
CA	RIVERSIDE	1176	176	FL	BROWARD COUNTY	2324	0
CA	SACRAMENTO	2222	0	FL	DADE COUNTY	5399	875
CA	SAN BERNARDINO	1095	0	FL	ESCAMBIA COUNTY	1015	0
CA	SAN DIEGO	7157	1694	FL	HILLSBOROUGH COUNTY	1655	0
CA	SAN FRANCISCO	8206	3680	FL	ORANGE COUNTY	1728	0
CA	SAN JOSE	3569	1423	FL	PALM BEACH COUNTY	1850	0
CA	SANTA ANA	1620	625	FL	PASCO COUNTY	783	0
CA	SANTA BARBARA	764	381	FL	POLK COUNTY	1238	0
CA	SANTA MONICA	1091	734	FL	BREVARD CO. CONSORTIUM	1043	0
CA	SOUTH GATE	769	508	FL	PINELLAS CO. CONSORTIUM	1953	0
CA	STOCKTON	1331	0	FL	VOLUSIA CO. CONSORTIUM	1685	0
CA	CONTRA COSTA COUNTY	1599	379	GA	ALBANY	828	0
CA	FRESNO COUNTY	1549	0	GA	ATLANTA	5030	0
CA	KERN COUNTY	1786	0	GA	COLUMBUS	1361	0
CA	LOS ANGELES COUNTY	13149	5407	GA	MACON	1161	0
CA	MARIN COUNTY	1257	642	GA	SAVANNAH	1560	0
CA	ORANGE COUNTY	2555	700	GA	DE KALB COUNTY	1909	0
CA	RIVERSIDE COUNTY	2331	0	GA	GRTR NO. ATLANTA CONSORTIUM	2649	0
CA	SACRAMENTO COUNTY	2663	0	HI	HONOLULU	4746	0
CA	SAN BERNARDINO COUNTY	2506	0	IL	CHICAGO	40364	9053
CA	SAN DIEGO COUNTY	1910	262	IL	EAST ST LOUIS	984	0
CA	SAN JOAQUIN COUNTY	1181	0	IL	PEORIA	896	0

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
IL	ROCKFORD	907	0	MI	KALAMAZOO	751	0
IL	COOK COUNTY	4679	0	MI	LANSING	1011	0
IL	DU PAGE COUNTY	1443	0	MI	SAGINAW	843	0
IL	MADISON COUNTY	1272	0	MI	GENESEE COUNTY	968	0
IL	ST CLAIR COUNTY	986	0	MI	OAKLAND COUNTY	1410	0
IL	LAKE COUNTY CONSORTIUM	1283	0	MI	WAYNE COUNTY	1487	0
IN	EVANSVILLE	939	0	MN	MINNEAPOLIS	3441	557
IN	FORT WAYNE	1074	0	MN	ST PAUL	1878	280
IN	GARY	1456	0	MN	DAKOTA CO. CONSORTIUM	1927	0
IN	INDIANAPOLIS	4315	0	MN	HENNEPIN CO. CONSORTIUM	1689	315
IN	SOUTH BEND CONSORTIUM	1068	0	MS	JACKSON	1567	0
IA	DES MOINES	1207	0	MO	KANSAS CITY	2986	0
KS	KANSAS CITY	1105	0	MO	SPRINGFIELD	864	0
KS	WICHITA	1680	0	MO	ST LOUIS	5532	0
KY	LEXINGTON-FAYETTE COUNTY	1414	0	MO	ST LOUIS COUNTY	2574	0
KY	LOUISVILLE	2996	0	NE	LINCOLN	901	0
KY	JEFFERSON COUNTY	1172	0	NE	OMAHA	1987	0
LA	BATON ROUGE	2219	0	NV	LAS VEGAS	1107	0
LA	NEW ORLEANS	7901	0	NV	RENO	761	0
LA	SHREVEPORT	1529	0	NV	CLARK COUNTY CONSORTIUM	1499	0
LA	JEFFERSON PARISH	1849	0	NH	MANCHESTER	755	226
MD	BALTIMORE	10333	2317	NJ	CAMDEN	1495	0
MD	ANNE ARUNDEL COUNTY	946	0	NJ	EAST ORANGE	1209	316
MD	BALTIMORE COUNTY	2463	767	NJ	ELIZABETH	1409	703
MD	MONTGOMERY COUNTY	1842	436	NJ	IRVINGTON	897	581
MD	PRINCE GEORGES COUNTY	2767	379	NJ	JERSEY CITY	3688	919
MA	BOSTON	7838	2148	NJ	NEWARK	7150	2048
MA	BROCKTON	902	179	NJ	PASSAIC	1110	760
MA	CAMBRIDGE	1137	552	NJ	PATERSON	2691	1475
MA	FALL RIVER	1174	278	NJ	TRENTON	1228	229
MA	LAWRENCE	952	237	NJ	BERGEN COUNTY	3541	2250
MA	LOWELL	970	229	NJ	BURLINGTON COUNTY	1039	0
MA	LYNN	940	258	NJ	CAMDEN COUNTY	1067	0
MA	NEW BEDFORD	1298	292	NJ	ESSEX COUNTY	1543	942
MA	SOMERVILLE	924	415	NJ	GLOUCESTER COUNTY	826	0
MA	SPRINGFIELD	1861	394	NJ	MIDDLESEX COUNTY	915	319
MA	WORCESTER	1627	730	NJ	MONMOUTH COUNTY	1411	334
MA	HOLYOKE CONSORTIUM	1035	219	NJ	HUDSON CO. CONSORTIUM	4453	2108
MA	MALDEN CONSORTIUM	2027	1060	NJ	OCEAN CO. CONSORTIUM	1356	237
MA	NEWTON CONSORTIUM	1490	984	NJ	UNION CO. CONSORTIUM	1669	998
MA	QUINCY CONSORTIUM	993	594	NM	ALBUQUERQUE	2030	0
MI	ANN ARBOR	870	358	NY	ALBANY	1055	0
MI	DETROIT	14658	0	NY	BABYLON TOWN	806	361
MI	FLINT	1378	0	NY	BUFFALO	5084	0
MI	GRAND RAPIDS	1367	0	NY	ISLIP TOWN	1138	453

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
NY	MOUNT VERNON	1017	672	PA	READING	871	0
NY	NEW YORK	127981	66967	PA	ALLEGHENY COUNTY	3942	0
NY	ROCHESTER	2913	0	PA	BEAVER COUNTY	929	0
NY	SYRACUSE	1909	0	PA	CHESTER COUNTY	1144	0
NY	UTICA	803	0	PA	LANCASTER COUNTY	1071	0
NY	YONKERS	2074	1292	PA	LUZERNE COUNTY	1107	0
NY	NASSAU COUNTY	4232	2530	PA	MONTGOMERY COUNTY	1489	0
NY	ORANGE COUNTY	796	0	PA	WASHINGTON COUNTY	1074	0
NY	ROCKLAND COUNTY	945	270	PA	WESTMORELAND COUNTY	1192	0
NY	SUFFOLK COUNTY	2084	415	PA	BUCKS COUNTY CONSORTIUM	1542	0
NY	WESTCHESTER COUNTY	1746	1088	PA	DELAWARE CO. CONSORTIUM	2502	0
NY	ERIE COUNTY CONSORTIUM	1021	0	PA	YORK COUNTY CONSORTIUM	1348	0
NY	MONROE COUNTY CONSORTIUM	1348	487	RI	PROVIDENCE	2151	0
NY	ONONDAGA CO. CONSORTIUM	833	0	SC	CHARLESTON	852	117
NY	SCHENECTADY CONSORTIUM	1467	0	SC	COLUMBIA	827	0
NC	CHARLOTTE	2124	0	SC	GREENVILLE COUNTY	1043	0
NC	DURHAM	1047	274	TN	CHATTANOOGA	1409	0
NC	GREENSBORO	987	0	TN	KNOXVILLE	1560	0
NC	RALEIGH	965	0	TN	MEMPHIS	5800	0
NC	WINSTON-SALEM	1052	0	TN	NASHVILLE-DAVIDSON COUNTY	2997	0
OH	AKRON	1937	0	TX	AUSTIN	2868	0
OH	CANTON	778	0	TX	BEAUMONT	840	0
OH	CINCINNATI	4743	0	TX	BROWNSVILLE	1067	199
OH	CLEVELAND	7921	0	TX	CORPUS CHRISTI	1788	0
OH	COLUMBUS	4843	0	TX	DALLAS	6611	0
OH	DAYTON	2178	0	TX	EL PASO	3798	0
OH	SPRINGFIELD	775	0	TX	FORT WORTH	2507	0
OH	TOLEDO	2792	0	TX	HOUSTON	10757	0
OH	YOUNGSTOWN	1112	0	TX	LAREDO	1245	264
OH	CUYAHOGA COUNTY	1612	0	TX	LUBBOCK	1066	0
OH	FRANKLIN COUNTY	913	0	TX	SAN ANTONIO	6711	0
OH	HAMILTON COUNTY	1443	0	TX	WACO	896	0
OH	MONTGOMERY CO. CONSORTIUM	1293	0	TX	HARRIS COUNTY	1779	0
OH	SUMMIT CO. CONSORTIUM	789	0	TX	HIDALGO COUNTY	1926	0
OH	TRUMBULL CO. CONSORTIUM	1045	0	TX	TARRANT COUNTY	934	0
OK	OKLAHOMA CITY	2504	0	UT	SALT LAKE CITY	1410	0
OK	TULSA	2007	0	UT	SALT LAKE CO. CONSORTIUM	1553	0
OR	CLACKAMAS COUNTY	860	0	UT	UTAH VALLEY CONSORTIUM	1190	0
OR	WASHINGTON COUNTY	1026	0	VA	ALEXANDRIA	771	135
OR	EUGENE CONSORTIUM	1206	0	VA	NEWPORT NEWS	1089	0
OR	PORTLAND CONSORTIUM	4297	0	VA	NORFOLK	2671	0
PA	ALLENTOWN	784	0	VA	PORTSMOUTH	1017	0
PA	ERIE	1011	0	VA	RICHMOND	2146	0
PA	PHILADELPHIA	18195	2946	VA	ROANOKE	756	0
PA	PITTSBURGH	4375	0	VA	VIRGINIA BEACH	1160	0

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
VA	ARLINGTON COUNTY	1092	368	WI	MADISON	1266	284
VA	FAIRFAX COUNTY	1771	375	WI	MILWAUKEE	6261	0
WA	SEATTLE	3928	782	PR	BAYAMON MUNICIPIO	1124	0
WA	SPOKANE	1411	0	PR	CAGUAS MUNICIPIO	803	0
WA	TACOMA	1355	0	PR	CAROLINA MUNICIPIO	1057	0
WA	CLARK COUNTY	977	0	PR	MAYAGUEZ MUNICIPIO	1147	0
WA	KING COUNTY	2117	0	PR	PONCE MUNICIPIO	1481	0
WA	PIERCE COUNTY	1592	0	PR	SAN JUAN MUNICIPIO	6195	0
WA	SNOHOMISH COUNTY	1023	0				
					Total	813810	168652

APPENDIX B - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION FROM $500,000 TO $750,000

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
AL	HUNTSVILLE	745	0	MI	PONTIAC	641	0
AL	TUSCALOOSA	690	0	MI	MACOMB COUNTY	640	0
AR	PINE BLUFF	533	0	MN	DULUTH	617	0
CA	ALHAMBRA	601	194	MN	ST LOUIS CO. CONSORTIUM	697	0
CA	BURBANK	669	325	NJ	ATLANTIC CITY	633	95
CA	CHULA VISTA	748	224	NJ	PERTH AMBOY	604	429
CA	COSTA MESA	647	306	NJ	MORRIS COUNTY	709	238
CA	EL CAJON	649	105	NJ	SOMERSET COUNTY	568	184
CA	FULLERTON	611	198	NY	BINGHAMTON	576	0
CA	GARDEN GROVE	691	240	NY	NEW ROCHELLE	701	446
CA	HAWTHORNE	534	253	NY	NIAGARA FALLS	707	0
CA	LYNWOOD	569	369	NY	DUTCHESS COUNTY	678	93
CA	MODESTO	712	0	NC	FAYETTEVILLE	681	0
CA	NATIONAL CITY	576	280	NC	HIGH POINT	527	0
CA	OCEANSIDE	616	0	NC	WILMINGTON	558	0
CA	ONTARIO	561	91	OH	EAST CLEVELAND	604	0
CA	RICHMOND	734	421	OH	HAMILTON CITY	566	0
CA	SALINAS	663	157	OH	LAKE COUNTY	549	0
CA	SANTA CLARA	536	274	OH	STARK COUNTY	561	0
CA	SANTA ROSA	632	363	OK	LAWTON	563	0
CA	SUNNYVALE	586	292	OR	SALEM	598	0
CA	TORRANCE	652	235	PA	HARRISBURG	658	0
CA	VALLEJO	550	82	PA	LANCASTER	576	0
CO	AURORA	620	0	PA	SCRANTON	668	0
CO	BOULDER	587	0	PA	BERKS COUNTY	644	0
CT	NEW BRITAIN	653	187	RI	PAWTUCKET	686	102
CT	STAMFORD	654	244	SC	GREENVILLE	561	0
FL	DAYTONA BEACH	600	0	SC	NORTH CHARLESTON	561	0
FL	HOLLYWOOD	612	0	TX	ABILENE	563	0
FL	WEST PALM BEACH	573	0	TX	AMARILLO	728	0
FL	LEE COUNTY	529	0	TX	ARLINGTON	718	0
FL	SARASOTA CO. CONSORTIUM	737	0	TX	GALVESTON	553	0
GA	ATHENS	533	0	TX	MC ALLEN	593	0
GA	AUGUSTA	725	0	TX	ODESSA	524	0
ID	BOISE	538	0	TX	WICHITA FALLS	560	0
IL	DECATUR	642	0	TX	BEXAR COUNTY	595	0
IL	SPRINGFIELD	659	0	VA	CHESAPEAKE	606	0
IL	WILL COUNTY	591	0	VA	HAMPTON	705	0
IN	BLOOMINGTON	539	121	VA	HENRICO COUNTY	683	0
IN	HAMMOND	546	0	WA	SPOKANE COUNTY	704	0
IN	MUNCIE	636	0	WV	HUNTINGTON	527	0
IN	LAKE COUNTY	625	0	WI	GREEN BAY	591	0
IA	DAVENPORT	642	0	WI	RACINE	558	0
KS	TOPEKA	607	0	WI	MILWAUKEE COUNTY	639	0
KY	COVINGTON	572	0	PR	AGUADILLA	559	0
LA	ALEXANDRIA	564	0	PR	ARECIBO	566	0
LA	LAFAYETTE	578	0	PR	GUAYNABO MUNICIPIO	541	0
LA	MONROE	617	0				
ME	PORTLAND	661	0		Totals	59190	6548

APPENDIX - C - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR STATES

STATE	HOME BASIC FORMULA ALLOCATION		AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	STATE	HOME BASIC FORMULA ALLOCATION		AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
ALABAMA	14751		0	NEBRASKA	3592		0
ALASKA	3000		34	NEVADA	3000		0
ARIZONA	4157		43	NEW HAMPSHIRE	3358		642
ARKANSAS	11164		0	NEW JERSEY	11052		4732
CALIFORNIA	42694		12621	NEW MEXICO	5022		102
COLORADO	6738		0	NEW YORK	31992		4667
CONNECTICUT	8952		4979	NORTH CAROLINA	22348		213
DELAWARE	3000		0	NORTH DAKOTA	3500	***	0
D.C.	7013	***	1224	OHIO	23899		46
FLORIDA	15214		321	OKLAHOMA	9970		0
GEORGIA	18398		388	OREGON	6928		0
HAWAII	3000		203	PENNSYLVANIA	22738		588
IDAHO	3479		0	RHODE ISLAND	3812		302
ILLINOIS	21805		1077	SOUTH CAROLINA	12356		59
INDIANA	12767		89	SOUTH DAKOTA	3559	***	0
IOWA	9645		92	TENNESSEE	14664		0
KANSAS	6561		0	TEXAS	33638		146
KENTUCKY	15390		0	UTAH	3000		0
LOUISIANA	13501		0	VERMONT	3500	***	234
MAINE	5153		0	VIRGINIA	13448		536
MARYLAND	6149		729	WASHINGTON	9318		39
MASSACHUSETTS	16237		8978	WEST VIRGINIA	9651		0
MICHIGAN	21325		141	WISCONSIN	12137		145
MINNESOTA	6909		87	WYOMING	3500	***	0
MISSISSIPPI	13863		153	PUERTO RICO	9634		0
MISSOURI	12538		190				
MONTANA	3981	***	0	Totals	587000		43800

*** $500,000 ADDED TO A STATE'S HOME BASIC FORMULA ALLOCATION BECAUSE THERE WAS NO UNIT OF GENERAL LOCAL GOVERNMENT ELIGIBLE FOR A HOME ALLOCATION WITHIN THE STATE

APPENDIX D - FY 1992 AREAS AND UNITS OF GENERAL LOCAL GOVERNMENT WHERE STATES MAY USE HOME FUNDS FOR NEW CONSTRUCTION [1]

ST	NAME		ST	NAME		ST	NAME		ST	NAME	
AK	JUNEAU BOROUGH		CA	SIMI VALLEY		IN	WEST LAFAYETTE		NJ	BLOOMFIELD	
AZ	SANTA CRUZ COUNTY		CA	THOUSAND OAKS		IA	IOWA CITY		NJ	CHERRY HILL	
CA	LOS ANGELES COUNTY	**	CA	TULARE		MD	FREDERICK COUNTY	**	NJ	CLIFTON	
CA	MONTEREY COUNTY	**	CA	UPLAND		MD	CALVERT COUNTY		NJ	EDISON	
CA	SANTA BARBARA COUNTY	**	CA	VENTURA		MD	CHARLES COUNTY		NJ	HAMILTON	
CA	SANTA CRUZ COUNTY	**	CA	VISTA		MD	TALBOT COUNTY		NJ	LONG BRANCH	
CA	SOLANO COUNTY	**	CA	WEST COVINA		MD	FREDERICK		NJ	MILLVILLE	
CA	SAN BENITO COUNTY		CA	WESTMINSTER		MA	BERKSHIRE COUNTY	**	NJ	NEW BRUNSWICK	
CA	SAN LUIS OBISPO COUNTY		CA	WHITTIER		MA	BRISTOL COUNTY	**	NJ	OLD BRIDGE TOWNSHIP	
CA	ANTIOCH		CA	WOODLAND		MA	ESSEX COUNTY	**	NJ	PARSIPPANY-TROYHILLS	
CA	BALDWIN PARK		CT	HARTFORD COUNTY	**	MA	HAMPDEN COUNTY	**	NJ	SAYREVILLE	
CA	BELLFLOWER		CT	MIDDLESEX COUNTY	**	MA	HAMPSHIRE COUNTY	**	NJ	VINELAND	
CA	BUENA PARK		CT	NEW HAVEN COUNTY	**	MA	MIDDLESEX COUNTY	**	NJ	WAYNE TOWNSHIP	
CA	CARSON		CT	LITCHFIELD COUNTY		MA	NORFOLK COUNTY	**	NJ	WOODBRIDGE	
CA	CHICO		CT	TOLLAND COUNTY		MA	PLYMOUTH COUNTY	**	NM	SANTA FE	
CA	CORONA		CT	WINDHAM COUNTY		MA	SUFFOLK COUNTY	**	NY	NASSAU COUNTY	**
CA	DAVIS		CT	BRISTOL		MA	WORCESTER COUNTY	**	NY	ROCKLAND COUNTY	**
CA	DOWNEY		CT	DANBURY		MA	BARNSTABLE COUNTY		NY	WESTCHESTER COUNTY	**
CA	ENCINITAS		CT	EAST HARTFORD		MA	FITCHBURG		NY	PUTNAM COUNTY	
CA	ESCONDIDO CITY		CT	FAIRFIELD		MA	FRAMINGHAM		NY	HUNTINGTON TOWN	
CA	FAIRFIELD		CT	GREENWICH		MA	GLOUCESTER		NY	NEWBURGH	
CA	GARDENA		CT	HAMDEN TOWN		MA	HAVERHILL		NY	POUGHKEEPSIE	
CA	IRVINE		CT	MANCHESTER		MA	LEOMINSTER		NY	WHITE PLAINS	
CA	LA MESA CITY		CT	MIDDLETOWN		MA	NORTHAMPTON		NC	FRANKLIN COUNTY	
CA	LAKEWOOD		CT	MILFORD		MA	PITTSFIELD		NC	GRANVILLE COUNTY	
CA	LANCASTER		CT	NORWALK		MA	SALEM		NC	CHAPEL HILL	
CA	LIVERMORE		CT	STRATFORD		MA	WESTFIELD		OH	BOWLING GREEN	
CA	LOMPOC		CT	WEST HARTFORD		MI	CLINTON TWP		PA	ABINGTON	
CA	MONTEBELLO		CT	WEST HAVEN		MS	ADAMS COUNTY		PA	LOWER MERION	
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** INCLUDES AS ELIGIBLE FOR NEW CONSTRUCTION ONLY THE PART OF THE COUNTY REMAINING AFTER TAKING OUT METROPOLITAN CITIES, URBAN COUNTIES, AND CONSORTIA.

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[1] STATES MAY ALSO USE THIER HOME FUNDS FOR NEW CONSTRUCTION IN JURISDICTIONS RECEIVING RENTAL HOUSING PRODUCTION SET-ASIDES IN APPDENDICES A AND B

[FR Doc. 92-743 Filed 1-10-92; 8:45 am]

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federal register

Monday
January 13, 1992

Part V

Department of Transportation

Federal Transit Administration

Recommended Fire Safety Practices for Transit Bus and Van Materials; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket 90-A]

Recommended Fire Safety Practices for Transit Bus and Van Materials Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice, request for comments.

SUMMARY: The Federal Transit Administration (FTA) after receiving public comments from a published notice, is recommending practices for testing flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. These recommendations are based on the Volpe National Transportation Systems Center's "Proposed Guidelines for Flammability and Smoke Emission Specifications", a version of which the rapid rail transit and light rail transit industry uses on a voluntary basis. The guidelines have been prepared to enable the transit industry to select materials for buses and vans that minimize the effect of fires. In addition, FTA is requesting additional comment on testing for fire retardants in foam materials under certain conditions since established tests are intended for textile materials.

DATES: Effective date: January 13, 1992. Comments relating to the suitability of test methods for evaluating retention of fire retardant chemicals in foam materials must be submitted on or before March 13, 1992.

ADDRESSES: Comments should be sent to Docket 90-A, Room 9316, Office of Chief Counsel, Federal Transit Administration, 400 7th St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Franz K. Gimmler, Deputy Associate Administrator for Safety, or Roy Field, Office of Safety, (202) 366-2896.

SUPPLEMENTARY INFORMATION:

A. Overview

This notice provides recommendations for testing flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. The recommendations are set forth in a table, printed below. Before that table, however, is a "Background" section explaining the genesis of this notice and discussing the comments to the docket; a "Scope" section indicating that the recommendations are designed to affect the selection practices for materials procured; and an "Application" section indicating the types of vehicles covered by the notice. The next section deals with the recommended procedures, and is followed by the table. Following the table is a list of notes referenced in the table, and following that are the sources of test procedures listed in the table. The final section includes definitions of terms used in the notes and the table.

B. Background

On July 2, 1990 the Federal Transit Administration (FTA) published a notice and request for public comment on "Recommended Fire Safety Practices for Transit Bus and Van Materials Selection," (55 FR 27402). That notice proposed recommendations for testing the flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. Like the "Recommended Fire Safety Practices for Heavy Rail and Light Rail Transit Materials Selection," on which they are based, these Recommended Practices are not regulatory in nature. Rather, these are voluntary Recommended Practices that are intended to be used to assess the fire risk of materials used in transit buses and vans. They are small scale laboratory tests intended for use in screening materials and, as such, do not duplicate actual fire conditions. However, their use will result in the selection of more fire resistant materials, which will minimize the fire threat in transit buses and vans and thereby reduce the injuries and property damage resulting from transit vehicle fires. Moreover, issuance of the notice at this time is consistent with the Department of Transportation's position on promoting safety in transportation.

Similar guidelines have been published by the Federal Railroad Administration for railroad passenger cars and in the National Fire Protection Association NFPA 130 Standard for Fixed Guideway Transit Systems. FTA plans in the future, if necessary, to update these Recommended Fire Safety Practices to respond to the National Highway Traffic Safety Administration research and rulemaking relative to Federal Motor Vehicle Safety Standard No. 302. In response to comments, FTA has made three major substantive changes to the Recommended Practices. These changes delete the requirement for vehicle windows to be included in the Recommended Practices; revise the floor covering requirement to meet only one test, namely, the E-648; and incorporate an aging test for seat cushions. These changes, and two minor editorial changes, are discussed more fully below.

Twelve organizations responded to the July 2, 1990 Notice. Responding organizations included seven materials suppliers, two transit authorities, one seating manufacturer, a state Department of Transportation and a consulting firm. All but one of the commenting organizations fully supported the adoption of the Recommended Practices. After careful review of the responses, FTA has chosen not to adopt some comments. For the most part, the comments that were not adopted concerned the following: Inclusion of toxicity requirements for vehicle materials, expanding the scope of the Recommended Practices and modifying certain aspects of the performance criteria. FTA's goal in issuing the Recommended Practices is to suggest a means for providing the traveling public and transit employees with the highest practical degree of safety. It is FTA's opinion that the comments not adopted would not further this goal.

The only response which did not fully support the adoption of the Recommended Practices was provided by a seating manufacturer. The comments provided by this responder were concerned with the availability of suitable materials. This included product performance, reliability, and cost. Similar concerns were also raised and addressed in the development of the Recommended Practices for rail vehicles. As evidenced by their adoption into rail transit authorities, there are suitable materials available at no major increase in cost.

Two commentors suggested the inclusion of toxicity requirements. FTA recognizes the need to address this issue, but because of its complexity, is not able to do so in the Recommended Practices. Instead, in an effort to respond to transit industry needs FTA initiated a program to develop guidelines for assessing the combustion toxicity of materials. Recognizing the scope and extreme complexity of this issue, FTA has requested the National Research Council's (NRC) Transportation Research Board and Materials Advisory Board of the Commission on Engineering and Technical Systems to assist in addressing this issue. In response to this request, the NRC has established a Committee on Toxicity Hazards of Materials Used in Rail Transit Vehicles. This committee, consisting of representatives of industry and academia, is reviewing the present state of knowledge of combustion toxicity, identifying specific toxicity hazards related to the use of polymeric materials

in transit vehicles, and recommending a plan of action for developing guidelines for testing materials.

In regard to expanding the scope of the Recommended Practices, a transit system recommended that the Recommended Practices include buses and vans that are remanufactured or rehabilitated. FTA stated in the July 2, 1990 **Federal Register** notice that the Recommended Practices will apply to the retrofit of existing vehicles. This terms is meant to include remanufactured or rehabilitated vehicles.

Several commenters (3) suggested changes to the performance criteria. In one instance, the proposed change would make the seat cushion smoke emission criteria more restrictive. This change is not significant from a safety perspective but could possibly limit the availability of seat cushion materials. A second suggestion concerned providing more restrictive standards for wall panels. The flammability and smoke emission characteristics of phenolic resins for fiberglass reinforced plastics were cited as results that are achievable. However, specifying the use of one particular family of materials, such as a phenolic, will result in a requirement that is too restrictive. Finally, a third commenter suggested that the specific optical smoke density criteria cited for use with the ASTM E-662 test for tile floor covering is too restrictive and tile floor covering should meet the same criteria as carpet. This is reasonable, and the Recommended Practices have been modified accordingly.

Two commenters addressed the issue of the retention of fire retardant characteristics of foam materials after the materials have been in service for some time. One commenter suggested that an endurance test be required to evaluate the retention of the fire safety characteristics after the seat cushion has been subjected to 100,000 compression-release cycles. In response to this comment, the Recommended Practices have been modified to incorporate testing according to the ASTM D-3574 Dynamic Fatigue Test, I_5, for cellular foams. Upon completion of this test, the foam materials will then be tested for surface flammability and smoke emission. A new Footnote 2 has been created for this purpose, and the other Footnotes renumbered. Another commenter suggested that to address the issue of the retention of fire retardant chemicals after the exposure of the seating materials to moisture, Footnote 3 be modified to delete the words "if appropriate". For upholstery materials this is reasonable, and the words "if appropriate" have been deleted. The test specified in Footnote 3, FED-STD-191A Textile Test Methods 5830, is intended for textile materials and not foams, therefore the existing footnote is not applicable to foams.

We are not aware of tests in this area and are therefore requesting comments on the existence and availability of suitable test methods for evaluating the retention of fire retardant chemicals in foams after exposure to moisture. Any such comments should be sent to Docket 90-A, room 9316, UCC-10, 400 7th Street, SW., Washington, DC 20590.

Another commenter suggested that covering a seat cushion with its fire block fabric "is the more effective combination from both a cost and safety standpoint." A major concern and cost to transit systems is the vandalism/slashing of vehicle seats. The slashing of seats and the exposure of the seat cushion to fire, totally negates the value of a fire blocking fabric and makes it necessary to test each component of the seat.

In regard to the flammability and smoke emission requirements for windows, three commenters requested that windows not be included in the Recommended Practices. They noted that not only were windows addressed previously in the FTA document "Baseline Advanced Design Transit Coach Specifications" (White Book), but windows in buses are not a major fire contributor. Plastic vehicle windows have not been reported to be the initiating or first vehicle material ignited. Furthermore, plastic windows melt and fall out of the vehicle during the fire. This melt and fall out characteristic has been noted in the FTA Fire Life Safety Exercises. Finally, the environment in which buses operate require that the windows be durable in that they be resistant to both weather, vandalism, etc. In light of the above, the requirement for windows has been deleted.

Recommended Practices

A. Scope

The recommended Fire Safety Practices for Transit Bus and Van Materials Selection are directed at improving the selection practices for interior materials procured for new vehicles and the retrofit of existing vehicles. Adoption of these recommended fire safety practices will help to minimize the fire threat in these vehicles and, thereby, reduce the injuries and damage resulting from fires.

B. Application

This document provides recommended fire safety practices for testing the flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. Vehicles considered as transit buses and vans are those used for urban, suburban, rural and specialized transit services. Types covered by these recommended practices are revenue (passenger carrying) vehicles that are placed in mass transit service by a recipient of Federal funds from the Federal Transit Administration. Some of the functions in the recommendations may not apply to all vehicles (*e.g.*, not all vehicles have windscreens).

C. Recommended Test Procedures and Performance Criteria

(a) The materials used in transit buses and vans should be tested according to the procedures and performance criteria set forth in Table 1.

(b) Transit agencies should require certification that combustible materials to be used in the construction of vehicles have been tested by a recognized testing laboratory, and that the results are within the recommended limits.

TABLE 1.—RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT BUS AND VAN MATERIALS

Category and function of material	Test procedure	Performance criteria
Seating:		
Cushion [1,2,5,9*]	ASTM D-3675	I_s < 25.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Frame [1,5,8]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Shroud [1,8]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.

TABLE 1.—RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT BUS AND VAN MATERIALS—Continued

Category and function of material	Test procedure	Performance criteria
Upholstery [1,3,4,5]	FAR 25.853 (Vertical)	Flame Time ≤ 10 sec; burn length ≤6 inch.
	ASTME-662	D_s (4.0) < 250 coated.
		D_s (4.0) < 100 uncoated.
Panels:		
Wall [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Ceiling [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Partition [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Windscreen [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
HVAC Ducting [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (4.0) < 100.
Light Diffuser [5]	ASTM E-162	I_s < 100.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Flooring:		
Wheel Well and Structural [6]	ASTM E-119	Pass.
Carpeting [7]	ASTM E-648	C.R.F. ≤ 0.5w/cm².
Insulation:		
Thermal [1,2,5]	ASTM E-162	I_s < 25.
	ASTM E-662	D_s (4.0) < 100.
Acoustic [1,3,5]	ASTM E-162	I_s < 25.
	ASTM E-662	D_s (4.0) < 100.
Miscellaneous:		
Fire Wall [6]	ASTM E-119	Pass.
Exterior Shell [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.

* Refers to Notes on Table 1.

Notes

1. Materials tested for surface flammability should not exhibit any flaming running or flaming dripping.

2. The surface flammability and smoke emission characteristics of seat cushion materials, should be demonstrated to be permanent after testing according to ASTM D-3574 Dynamic Fatigue Tests I_3 (Procedure B).

3. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by washing according to FED-STD-191A Textile Test Method 5830.

4. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM D-2724. Materials that cannot be washed or dry cleaned should be so labeled and should meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

5. ASTM E-662 maximum test limits for smoke emission (specific optical density) should be measured in either the flaming or non-flaming mode, depending on which mode generates the most smoke.

6. Flooring and fire wall assemblies should meet the performance criteria during a nominal test period determined by the transit property. The nominal test period should be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to safe area. The nominal test period should not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against vehicle fires. Penetrations (ducts, piping, etc.) should be designed against acting as conduits for fire and smoke.

7. Carpeting should be tested in accordance with ASTM E-648 with its padding, if the padding is used in actual installation.

8. Arm rests, if foamed plastic, are tested as cushions.

9. Testing is performed without upholstery.

D. Referenced Fire Standards

The source of test procedures listed in Table 1 are as follows:

(1) Leaching Resistance of Cloth, FED-STD-191A Textile Test Method 5830.

Available from: General Services Administration Specifications Division, Building 197, Washington Navy Yard, Washington, DC 20407.

(2) Federal Aviation Administration Vertical Burn Test, FAR-25-853.

Available from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(3) American Society for Testing Materials (ASTM)

(a) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E-162;

(b) Surface Flammability for Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D-3675;

(c) Fire Tests of Building Construction and Materials, ASTM E-119;

(d) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E-662;

(e) Bonded and Laminated Apparel Fabrics, ASTM D-2724;

(f) Flexible Cellular Materials-Slab, Bonded, and Molded Urethane Foams, ASTM D-3574.

Available from: American Society for Testing and Materials; 1916 Race Street, Philadelphia, PA 19103.

In all instances, the most recent issue of the document or the revision in effect at the time of request should be used in the evaluation of the material specified herein.

Definition of Terms

1. Flame spread index (I_s) as defined in ASTM E-162 is a factor derived from the rate of progress of the flame front (F_s) and the rate of heat liberation by the material under test (Q), such that $I_s = F_s \times Q$.

2. Specific optical density (D_s) is the optical density measured over unit path length within a chamber of unit volume produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm^2 for a specified period of time.

3. Surface flammability denotes the rate at which flames will travel along surfaces.

4. Flaming running denotes continuous flaming material leaving the site of the burning material as its installed location.

5. Flaming dripping denotes periodic dripping of flaming material from the site of burning material at its installed location.

Issued on: January 7, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-729 Filed 1-10-92; 8:45 am]

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Federal Register

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

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200-499	(869-013-00079-0)	27.00	Apr. 1, 1991
500-699	(869-013-00080-3)	13.00	Apr. 1, 1991
700-1699	(869-013-00081-1)	26.00	Apr. 1, 1991
1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1,1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-013-00101-0)	6.50	Apr. 1, 1991
27 Parts:			
1-199	(869-013-00102-8)	29.00	Apr. 1, 1991
200-End	(869-013-00103-6)	11.00	Apr. 1, 1991
28	(869-013-00104-4)	28.00	July 1, 1991
29 Parts:			
0-99	(869-013-00105-2)	18.00	July 1, 1991
100-499	(869-013-00106-1)	7.50	July 1, 1991
500-899	(869-013-00107-9)	27.00	July 1, 1991
900-1899	(869-013-00108-7)	12.00	July 1, 1991
1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869-013-00110-9)	14.00	July 1, 1991
1911-1925	(869-013-00111-7)	9.00	[6] July 1, 1989
1926	(869-013-00112-5)	12.00	July 1, 1991
1927-End	(869-013-00113-3)	25.00	July 1, 1991
30 Parts:			
1-199	(869-013-00114-1)	22.00	July 1, 1991
200-699	(869-013-00115-0)	15.00	July 1, 1991
700-End	(869-013-00116-8)	21.00	July 1, 1991
31 Parts:			
0-199	(869-013-00117-6)	15.00	July 1, 1991
200-End	(869-013-00118-4)	20.00	July 1, 1991
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-013-00119-2)	25.00	July 1, 1991
190-399	(869-013-00120-6)	29.00	July 1, 1991
400-629	(869-013-00121-4)	26.00	July 1, 1991
630-699	(869-013-00122-2)	14.00	July 1, 1991
700-799	(869-013-00123-1)	17.00	July 1, 1991
800-End	(869-013-00124-9)	18.00	July 1, 1991
33 Parts:			
1-124	(869-013-00125-7)	15.00	July 1, 1991
125-199	(869-013-00126-5)	18.00	July 1, 1991
200-End	(869-013-00127-3)	20.00	July 1, 1991
34 Parts:			
1-299	(869-013-00128-1)	24.00	July 1, 1991
300-399	(869-013-00129-0)	14.00	July 1, 1991
400-End	(869-013-00130-3)	26.00	July 1, 1991
35	(869-013-00131-1)	10.00	July 1, 1991
36 Parts:			
1-199	(869-013-00132-0)	13.00	July 1, 1991
200-End	(869-013-00133-8)	26.00	July 1, 1991
37	(869-013-00134-6)	15.00	July 1, 1991
38 Parts:			
0-17	(869-013-00135-4)	24.00	July 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991
39	(869-013-00137-1)	14.00	July 1, 1991
40 Parts:			
1-51	(869-013-00138-9)	27.00	July 1, 1991
52	(869-013-00139-7)	28.00	July 1, 1991
53-60	(869-013-00140-1)	31.00	July 1, 1991
61-80	(869-013-00141-9)	14.00	July 1, 1991
81-85	(869-013-00142-7)	11.00	July 1, 1991
86-99	(869-013-00143-5)	29.00	July 1, 1991
100-149	(869-013-00144-3)	30.00	July 1, 1991
150-189	(869-013-00145-1)	20.00	July 1, 1991
190-259	(869-013-00146-0)	13.00	July 1, 1991
260-299	(869-013-00147-8)	31.00	July 1, 1991
300-399	(869-013-00148-6)	13.00	July 1, 1991
400-424	(869-013-00149-4)	23.00	July 1, 1991
425-699	(869-013-00150-8)	23.00	[6] July 1, 1989
700-789	(869-013-00151-6)	20.00	July 1, 1991
790-End	(869-013-00152-4)	27.00	July 1, 1991
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-013-00153-2)	8.50	[7] July 1, 1990
101	(869-013-00154-1)	22.00	July 1, 1991
102-200	(869-013-00155-9)	11.00	July 1, 1991
201-End	(869-013-00156-7)	10.00	July 1, 1991
42 Parts:			
1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
400-429	(869-011-00159-9)	21.00	Oct. 1, 1990
430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
43 Parts:			
1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
44	(869-011-00164-5)	23.00	Oct. 1, 1990
45 Parts:			
1-199	(869-013-00165-8)	18.00	Oct. 1, 1991
200-499	(869-013-00166-6)	12.00	Oct. 1, 1991
*500-1199	(869-013-00167-2)	26.00	Oct. 1, 1991
1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
46 Parts:			
1-40	(869-011-00169-6)	14.00	Oct. 1, 1990
41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
140-155	(869-013-00173-7)	13.00	Oct. 1, 1991
156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
47 Parts:			
0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
20-39	(869-011-00179-3)	18.00	Oct. 1, 1990
40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
70-79	(869-011-00181-5)	18.00	Oct. 1, 1990
80-End	(869-011-00182-3)	20.00	Oct. 1, 1990
48 Chapters:			
1 (Parts 1-51)	(869-011-00183-1)	30.00	Oct. 1, 1990
*1 (Parts 52-99)	(869-013-00184-2)	19.00	Oct. 1, 1991
2 (Parts 201-251)	(869-011-00185-8)	19.00	Oct. 1, 1990
2 (Parts 252-299)	(869-011-00186-6)	15.00	Oct. 1, 1990
3-6	(869-011-00187-4)	19.00	Oct. 1, 1990
7-14	(869-011-00188-2)	26.00	Oct. 1, 1990
15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
49 Parts:			
1-99	(869-011-00190-4)	14.00	Oct. 1, 1990
100-177	(869-011-00191-2)	27.00	Oct. 1, 1990
178-199	(869-011-00192-1)	22.00	Oct. 1, 1990
200-399	(869-011-00193-9)	21.00	Oct. 1, 1990
400-999	(869-011-00194-7)	26.00	Oct. 1, 1990
1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
50 Parts:			
1-199	(869-011-00197-1)	20.00	Oct. 1, 1990
200-599	(869-011-00198-0)	16.00	Oct. 1, 1990
600-End	(869-011-00199-8)	15.00	Oct. 1, 1990
CFR Index and Findings Aids	(869-013-00053-6)	30.00	Jan. 1, 1991

Title	Stock Number	Price	Revision Date
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Individual copies		2.00	1992

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.